Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 12 OCTOBER 4, 1978 No. 40

This issue contains

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78-309)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 percentum or more from the quarterly rate published in T.D. 78-237 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purpose to convert such currency into currency of the United States, conversion shall be at the following rates:

Japan yen:	
August 29, 1978	$0.005280
August 30, 1978	.005289
August 31, 1978	.005249
September 1, 1978	.005241
Spain peseta:	
August 28, 1978	$0.013459
August 29, 1978	.013454
August 30, 1978	.013580
August 31, 1978	.013559
September 1, 1978	.013578
Switzerland franc:	
August 28, 1978	$0.5912
August 29, 1978	.6080
August 30, 1978	.6070
August 31, 1978	.6095½
September 1, 1978	.623053

LIQ-3-O:D:S

Date: September 13, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-310)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
August 28, 1978	$0.5863
August 29, 1978	.5863
August 30, 1978	.5881
August 31, 1978	.5881
September 1, 1978	.588097
Hong Kong dollar:	
August 28, 1978	$0.2122
August 29, 1978	.2120
August 30, 1978	.2119
August 31, 1978	.2118
September 1, 1978	.2119
Iran rial:	
August 28–September 1, 1978	$0.0141½
Philippines peso:	
August 28–September 1, 1978	$0.1358
Singapore dollar:	
August 28, 1978	$0.4420
August 29, 1978	.4405
August 30, 1978	.4437
August 31, 1978	.4433
September 1, 1978	.4440
Thailand baht (tical):	
August 28–September 1, 1978	$0.0494

LIQ-3-O:D:S

Date: September 13, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-311)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: September 14, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78-311)

Entry Under Bond: Item 864.05, TSUS; Gold Wire and Gold Ingots Imported for the Manufacture of Chains and Bracelets

Date: April 5, 1978
File: CON-9-04-R:CD:D MM
208823

To: District Director of Customs, San Juan, P.R. 00903.
From: Director, Carrier, Drawback, and Bonds Division.
Subject: Internal advice inquiry 184-77—temporary importation under bond.

You inquire whether the entry of solder-filled gold wire for the manufacture of chains, bracelets, et cetera and subsequent exportation to Canada would be proper under item 864.05, Tariff Schedules of then United States. You indicate that the imported material may also consist of gold ingots to be rolled and milled into wire for its conversion into chains, bracelets, et cetera.

Item 864.05, TSUS, provides for the temporary entry free of duty under bond of articles to be repaired, altered, or processed, including processes which result in articles manufactured or produced in the United States. We are of the opinion from the facts presented that entry of the merchandise under item 864.05 would be proper.

You further state that residues or remnants resulting from the manufacturing process will be remelted to produce plaques and other jewelry findings that will go into the final product, and that the true wastes and irrecoverable losses are estimated at not more than 2 percent.

In this regard, headnote 2(b), schedule 8, subpart 5C of the tariff schedules provides that merchandise may be admitted into the United States under item 864.05 only on condition that if any processing of such merchandise results in an article manufactured or produced in

the United States a complete accounting will be made to the Customs Service for all articles, wastes, and irrecoverable losses resulting from such processing, and all articles and valuable waste resulting from such processing will be exported or destroyed under Customs supervision within the bond period. Therefore, the company would have to maintain records sufficient to insure compliance with the cited law with respect to the imported materials.

We suggest that you forward issues concerned with TIB directly to this office for quicker service. As noted above your request was not received by us until March 7, 1978.

(T.D. 78–312 through T.D. 78–320)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: September 15, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78–312)

Drawback: "Foreign Ownership;" Foreign Corporation Owned Primarily by American Corporations

Date: April 25, 1978
File: DRA–1–09–R:CD:D MM
208743

Re Your memorandum dated February 14, 1978, concerning a drawback authorization issued March 30, 1977, to (name).

REGIONAL COMMISSIONER OF CUSTOMS,
New Orleans, La.

DEAR SIR: You ask for our advice with respect to the term foreign ownership within the meaning of title 19, U.S.C., section 1313(g).

Company A has been authorized a rate of drawback under section 1313(g) covering an ocean-going pipelaying/derrick barge built for foreign account and ownership of company B. You are in receipt of an audit report which shows that company B is in fact owned primarily by American corporations.

The question raised by regulatory audit is whether the ownership of the barge is in corporation B or in the member companies forming

it. You set forth in your memorandum the opinion that company B is a foreign corporation and as a separate entity must be considered the foreign owner within the meaning of the term under title 19, U.S.C., section 1313(g).

A corporation, under the law, is considered as being an artificial person or legal entity having legal existence distinct and apart from that of its members. Therefore, headquarters concurs with your opinion that company B is the owner of the barge in question and that company A is entitled to drawback as the barge was built for foreign account and ownership.

(T.D. 78-313)

Drawback: Requirement That Both Principals and Agents Have Drawback Authorizations

Date: May 1, 1978
File: DRA-1-09-R:CD:D BFS 208861

To: Director, Classification and Value, Miami, Fla.
From: Director, Carriers, Drawback, and Bonds Division.
Subject: T.D. 55027(2) and T.D. 55207(1).

You asked whether manufacturers, including both principals and agents, operating under the agency procedures described in T.D. 55027(2) and T.D. 55207(1) must have drawback authorizations.

Section 22.3(a) of the Customs Regulations provides that each manufacturer or producer of articles for export with drawback shall apply for a drawback authorization. In the agency context described above, this provision means that both principal and agent must have drawback authorizations to cover the relevant transaction.

The effective date for payment of drawback may be no earlier than the date Customs received the first application to result in a drawback authorization for either the principal or agent.

(T.D. 78-314)

Duty Assessment: Tariff Status of "Platforms" or "Jackets" Used on the Outer Continental Shelf

Date: April 1, 1978
File: VES-3-15-R:CD:C $\frac{103260}{102753}$ CR

DEAR——: This is in response to your letter of January 12, which was in furtherance of the meeting of January 11, 1978, attended by

yourself and several Customs officials, including myself, relating to the use of a "platform or jacket" on the Outer Continental Shelf.

The Customs ruling of May 4, 1977, file VES–3–15–R:CD:C, 102753 CR, to (name), President, (company name), copy of which you have, was discussed at length. That ruling related in major portions to Customs laws concerning the importation into the territorial waters of the United States of platforms for offshore oil exploration and production.

Your request, however, concerns the use of "platforms" or "jackets" on the Outer Continental Shelf. Since your letter provides no description of the platform or jacket, we will assume that the platform described in our ruling of May 4, 1977, is the same structure we presently have under consideration. Therefore, we will incorporate by reference the description of the platform described in the May 4, 1977, letter into this response.

The provisions of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), extend the Constitution and laws and civil and political jurisdiction of the United States to artificial islands and fixed structures which may be erected on the Outer Continental Shelf for the purpose of exploring for or exploiting its natural resources.

Within the context of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)), a "fixed structure" refers, among other things, to a fixed drilling platform, and has been extended to include mobile drilling rigs (or platforms) secured to or submerged on to the Outer Continental Shelf for drilling operations.

The Customs Service has ruled that if the subject platforms were to be erected or attached outside the territorial waters of the United States (i.e., on the Outer Continental Shelf), no duty on the structures would be imposed since they would not be considered to have been imported into the United States. However, once there exists on the Outer Continental Shelf a fixed structure, such as this platform, erected thereon for the purpose of exploring its natural resources, then the Customs and naviagtion laws (including the coastwise laws, the laws on the entry and clearance of vessels, and the provisions for dutiability of merchandise) are applicable to such structure. Merchandise imported for such a platform would be classifiable and dutiable under the various provisions of the tariff schedules.

We shall apply these principles to the questions you raise.

1. It is your understanding that a "jacket coming from Aruba going out of the Continental Shelf 3–mile limit, not coming into the United States, would not be subject to taxes." It is our opinion that if a platform or jacket, as described in the May 4, 1977, ruling, were transported from Aruba and erected and attached outside the territorial waters of the United States on the Outer Continental Shelf,

there would be no duty imposed on this structure. This is so because it would not be considered to have been imported into the United States.

2. You ask if you should "move material to these platforms or jackets and the taxes have been paid on the material in advance, would it be retaxable?"

During the period when the structure is secured to or submerged on the seabed of the Outer Continental Shelf for drilling operations, the Customs and navigation laws and the provisions for dutiability of merchandise would apply. Therefore, if any American goods or any foreign merchandise upon which duty had been previously paid were transported between a point in the United States (including a port, harbor, or other point in the territorial waters) and a platform affixed to the Outer Continental Shelf, no duty would be imposed on these articles. Of course, the transportation of this merchandise between a point in the United States or a platform so located is a coastwise transportation, subject, among other things, to the prohibition contained in title 46, United States Code, section 883. Therefore, this transportation must be accomplished by a vessel qualified to engage in the coastwise trade. A foreign vessel may not engage in this transportation.

On the other hand, if merchandise is transported directly to the platform from a foreign port or place, the Customs laws relating to the provisions for dutiability of merchandise would apply. The merchandise transported to the platform from a foreign port or place would be subject to dutiable treatment in accordance with the Tariff Schedules of the United States (TSUS). A foreign vessel may transport the merchandise from a foreign port or place in accordance with the provisions of title 19, United States Code, section 1447, which permits imported merchandise to be landed at a place other than a port of entry.

3. You ask "if we move existing drilling rigs from offshore to a new structure, will these be taxable?"

We wish to advise you that in our May 4, 1977, ruling letter, we noted that the inquirer did not intend to transport the structure from one location to another, but if done so in the future, it would be necessary to sever the legs of the structure at the seabed level and transport it upon a barge to the next location. Since we are incorporating by reference the May 4, 1977, letter, we assume that you intend to accomplish the transportation of your drilling rig by this method.

It is our opinion that the drilling rig when so transported outside of the territorial waters of the United States from one point on the Outer Continental Shelf to another such point on the Outer Continental Shelf would not be subject to duty.

274-188—78——2

(T.D. 78–315)

Manifesting: Containers Transported by Coastwise Qualified Vessels Solely in Domestic Traffic

Date: April 5, 1978
File: VES–3–03–R:CD:C
100711 RB

DISTRICT DIRECTOR OF CUSTOMS,
Tampa, Fla. 33062

DEAR SIR: This is with reference to your memorandum of June 22, 1973, and its enclosure from (name) of (name), concerning the manifesting of containers transported between points in the United States in vessels which are entitled to engage in the coastwise trade and which are also carrying containers in a foreign residue cargo movement. The containers being transported coastwide are apparently American made and have been entered under bond as instruments of international traffic and, while some are empty, others contain domestic cargo.

By contrast, vessels entering the United States from abroad would naturally be required to manifest their containers then on board at the time of entry; and, in this respect, such containers are treated as cargo (see T.D. 55624(4)); likewise, American vessels sailing between U.S. ports via a foreign port would have to include on the required coastwise manifest any containers so conveyed (sec. 4.82(b), Customs Regulations; 19 U.S.C. 293). However, only foreign vessels are explicitly required to mainfest empty cargo containers transported between coastwise points (sec. 4.93(c), Customs Regulations; 46 U.S.C. 883).

However, there is no specific regulation compelling coastwise qualified vessels to manifest containers moving solely in domestic traffic and we know of no legal basis for requiring cargo manifests from domestic carriers under such circumstances. Furthermore, this absence of a specific regulatory or legal requirement to manifest such containers prevails whether they are empty or contain domestic cargo, and whether or not they are released as instruments of international traffic under section 10.41a of the regulations (whether of American or foreign manufacture), and even though they are transported alongside other containers which carry inward foreign cargo (which of course, must be manifested).

Consequently, we believe that vessels of the United States entitled to engage in the coastwise trade are not legally required to manifest containers which are being conveyed in domestic commerce between ports of the United States.

(T.D. 78-316)

Manifesting, Cargo Control, and Cargo Transfer Requirements When One Carrier Books Space for the Carriage of Cargo on a Competitor's Vessel

Date: April 6, 1978
File: ENT-1-01 R:E:E
305153 M

DISTRICT DIRECTOR OF CUSTOMS,
Baltimore, Md. 21202

DEAR SIR: This is in reply to your letter of October 17, 1977 (file No.: INS-2-DD:IC:I), under section 177.11, Customs Regulations, concerning the manifesting, transfer of cargo, and control of cargo requirements involved when one carrier books space for the carriage of cargo on a competitor's vessel for the purpose of serving its accounts more effectively. It is your understanding that this type of arrangement is made under the auspices of ASECA (Atlantic Steamship Energy Conservation Agreement).

As an illustration of the problems you have encountered, you have submitted documentation involving such a transaction between two carriers which operate within the confines of Dundalk Marine Terminal in Baltimore. Carrier A booked space for the carriage of cargo of its clients on a vessel of carrier B, sailing from Bremerhaven, Germany to New York, Baltimore, and Norfolk, Va. Carrier B carried on this vessel cargo from its own clientele, as well as that cargo booked by A for carriage. The cargo which B carried for A was destined for Baltimore.

For the portion of the merchandise carried for A, B's vessel manifest showed A as the consignee of the merchandise and gave a very general description of the merchandise, such as "10 Pal Castings." You point out that such minimum amount of information does not fulfill, in your opinion, the requirements of title 19, United States Code, section 1431.

We agree that the information set forth on the inward foreign manifest is inadequate and not in compliance with 19 U.S.C. 1431. It fails to comply with 19 U.S.C. 1431 in the following respects:

1. Failure to set forth a "detailed account of all merchandise." We do not consider "10 Pal(lets of) Castings" to be a detailed account. There should be information as to what kind of castings and how many castings on a pallet.
2. Failure to list "the marks and numbers of each package."
3. Failure to set forth the "names of the persons to whom such packages are respectively consigned." We do not consider the vessel line to whom the merchandise is transshipped to be the consignee contemplated by 19 U.S.C. 1431.

Although we appreciate why the steamship lines do not wish to disclose this information, we are without authority to permit exceptions to the legal requirements. The failure to comply with the requirements of 19 U.S.C. 1431 is a violation of section 1436 of title 19 United States Code, and subjects the master to a fine of $1,000 for each offense.

You note in your illustration that carrier A on two different occasions attempted to secure the transfer of the cargo delivered by B for A from B's storage area to its own (A's) storage area. On the first occasion, A submitted a delivery ticket (Customs form 6043) to the Customs office which handles B's shipments and requested permission to have the merchandise (which had been delivered by B for A) transferred to A's storage area. Your office denied this request because part 125 of the Customs Regulations does not authorize the transfer of imported cargo from one steamship company to another in order to strip, manipulate, or effect delivery. In addition there were no entries on hand pertaining to this cargo.

On the next day, your office was contacted by A which suggested that the above-mentioned merchandise could be moved under cover of a permit to transfer (Customs form 3499) with A's detailed abstract manifest for such cargo. You denied this request because this type of permit is approved only if an entry has been filed for the manifested cargo.

You point out that in addition, the permit to transfer mentioned in section 19.40 pertains specifically to the transfer of containerized cargo from the importing carrier to a container station. You note that there are no container stations within Dundalk Marine Terminal.

Under the circumstances mentioned above, we agree with your refusal to permit the transfer of the cargo from B's storage area to A's storage area. It appears from the facts in this case that the carriers are attempting to shift liability for the incoming cargo from B's vessel term bond to A's vessel term bond. Prior to the filing of an entry liability for imported merchandise may be shifted from one carrier to another person under the following circumstances:

(1) To another carrier, when the merchandise is turned over to the latter in accordance with part 18 of the Customs Regulations for transportation under bond,
(2) To a cartman for delivery of the merchandise within the port limit to the public stores, bonded warehouse, or container station (see sec. 125.32), or
(3) To a container station operator for transfer of the merchandise to a container station (see sec. 19.40–1945).

Under the facts in your case, there is no provision of Customs law or regulations which would permit the transfer of liability for the incoming cargo from carrier B to carrier A.

Under section 151.7 of the Customs Regulations an importer may request that his own merchandise be examined at his premises. It has been ruled that the movement of the merchandise to the importer's premises for examination contemplated in section 151.7 of the Customs Regulations may be made only upon the filing of an entry. Section 101.1(k) of the Customs Regulations states that the importer is the person primarily liable for the payment of the duties on the merchandise. The consignee is listed as an importer. 19 U.S.C. 1483 states that the holder of a bill of lading is the consignee for entry purposes. Under these circumstances, A is not the consignee for entry purposes. The original bills of lading are made out to A's clients and A is not primarily liable for the payment of the duties on the imported cargo.

The merchandise in question could be transferred from B's storage area to A's storage area, if B makes such transfer request under provision 4 of his vessel bond and is willing to remain liable for the imported merchandise prior to entry (or some authorized transfer mentioned above), provided your office approves such physical transfer of the merchandise. However, if any shortage occurred in A's storage area for such merchandise, B would be liable for such shortage under his vessel bond. Even in this instance, you may deny permission to permit the physical transfer of the merchandise from B's storage area to A's storage area, if you believe that such transfers would disrupt the operations of your port.

(T.D. 78–317)

Entry: Use of Facsimile Signature on Transportation Entry

Date: April 10, 1978
File: TRA–8–01 R:E:E
305692 M

DEAR ——: This is in reply to your letter of March 7, 1978, requesting permission for your company to use a facsimile signature on the transportation entries (Customs form 7512) which you file with Customs.

You point out that your company must prepare numerous amounts transportation entries of all kinds throughout the United States. To expedite the preparation of Customs form 7521's, your company has developed an automated system for computer printing the Customs form 7512 forms. However, your company has still been faced with physically signing each of the Customs form 7512's in two places on each set.

To alleviate this task, you requested and received permission from the District Director of Customs at San Francisco to use a rubber-

stamp facsimile signature on the transportation entries (Customs form 7512's). However, in spite of this approval by Customs at San Francisco as to your company's use of a facsimile signature, the District Directors of Customs at Los Angeles and Seattle have rejected your request.

You state that the type of facsimile signature which your company would prefer to use is a computer-printed signature. However, if we objected to such a signature, either a preprinted signature or rubber-stamp signature would be preferable to a handwritten signature. You also request if one facsimile signature may be used for all the ports in the United States.

You enclosed as background material, a copy of the January 22, 1977, letter by the San Francisco Regional Counsel of Customs advising the District Director of Customs at San Francisco that he had no legal objections to your request at that time for the use of a rubber-stamped facsimile on the transportation entries filed at San Francisco.

We agree with the Regional Counsel's determination. The courts have generally given a broad interpretation to the word "signature" and have not limited it to the person's name in his own handwriting. For example, courts have stated that "A signature may be written by hand, or printed, or stamped, or typewritten, or engraved, or photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it." Furthermore, the Customs laws and regulations involved do not specify that the signature must be a written one. As long as there is sufficient evidence to show that the party involved recognizes the mark, symbol or device used as his signature and assumes responsibility for the documents bearing such mark, this mark is sufficient to be considered the person's signature. Therefore, a facsimile signature is sufficient, if a letter is submitted by your company to Customs assuming the responsiblity of your company for documents bearing that facsimile signature.

Furthermore, you are not limited by the type of facsimile signature you may choose to use. A computer printed signature would be acceptable. Furthermore, you may use one signature for all ports in the United States. Since you intend to use just one computer-printed signature nationally, you should send several copies of this signature, along with a letter by your company assuming all legal responsibility for any 7512's utilizing its facsimile signature to the Commissioner of Customs. The Commissioner will issue a notice to the field informing them of your computer-signature facsimile and will send a copy of such notice to your company.

(T.D. 78–318)

Entry and Clearance: Applicability of Customs Laws to LASH-Type Barges

Date: April 10, 1978
File: VES–5–13–R:CD:C
102643 JM

REGIONAL COUNSEL OF CUSTOMS,
Chicago, Ill. 60603

DEAR SIR: This is in further reference to your memorandum of February 4, 1977, concerning the applicability of Customs laws to LASH-type barges. Your questions are set forth below and answered in the order asked:

1. For purposes of 19 U.S.C. 1584, are the LASH-type barges in question "bound to the United States" as they proceed from New Orleans to ports on the Mississippi so that section 1584 applies when, at a subsequent port or the river, merchandise described in the barge manifests is not found?

We have previously held that the barges moving under their own power or in tow from port to port with either residue cargo or cargo for export must comply with all the requirements applicable to vessels in the foreign trade, including the necessity of their obtaining permits to proceed (see CIE 770/67, dated Aug. 22, 1967, copy enclosed).

In event investigation reveals that the merchandise was onboard at New Orleans and only the manifest at the subsequent port on the Mississippi is incorrect, a penalty of $500 shall be assessed against the master of the barge for violation of title 19, United States Code, section 1445 at the port where the incorrect manifest is presented.

A manifest discrepancy at the port of first arrival from foreign incurs a penalty under title 19, United States Code, section 1584 whether the discrepancy is discovered at that port or at a subsequent port, and is to be assessed at the port where discovered. Accordingly, if it is determined that the merchandise not found at the subsequent port was not on board at New Orleans, a penalty of $500 should be assessed against the master of the mother ship at the subsequent port for the violation of section 1584 at New Orleans.

Assessment of a penalty under section 1584 at a secondary port as a result of a manifest discrepancy which occurred at the port of first arrival does not preclude the assessment of additional penalties under section 1445 for violations of sections 1443 and 1444 at the secondary port, if applicable.

2. Would the petitioner be liable under 19 U.S.C. 1448, 19 U.S.C. 1453, 19 U.S.C. 1584, or a combination of these, assuming that the pilferage took place in New Orleans? While en route to St. Louis? After unlading in St. Louis?

If the pilferage took place in New Orleans, there would be no violation of section 1584 because the manifest would be correct in that the manifested quantity arrived aboard the vessel. Since the pilfered merchandise would be landed without a permit, the master would be liable to a penalty under section 1453. Since the merchandise aboard the barges would not have been properly landed at New Orleans, and the pilferage is from the barge rather than the dock, no liability is incurred under section 1448 for removal of the merchandise from the place of unloading without a permit.

If the merchandise is pilfered en route to St. Louis and the manifest presented at St. Louis is therefore incorrect, the penalty is incurred under section 1445 as stated above rather than section 1584. Assuming the pilfered merchandise is landed, liabilities under section 1453 are incurred. No liability is incurred under section 1448 because the merchandise was pilfered from the vessel rather than from the place of unlading.

If the merchandise is pilfered after unlading at St. Louis, liabilities for removal from the place of unlading without a permit are incurred under section 1448. Assuming the merchandise was properly manifested and properly unladen prior to pilferage, neither section 1584 nor section 1453 is applicable.

(T.D. 78–319)

Tariff Status of Foreign-Built Yacht When Ownership Is Transferred, After Duty-Paid Importation, From Domestic Corporation to Foreign Corporation

Date: April 11, 1978
File: VES–12–02–R:CD:C
103359 JM

DEAR SIR: This is in reference to your letter dated March 23, 1978, requesting a ruling concerning the dutiability of the yacht (name).

You state that the subject yacht was built at Kaag, Holland, in 1963, that it was imported into the United States in 1963 and that a Customs entry was filed and duty of $89,224.90 paid. In 1977, the Delaware corporation which owned the yacht formed a Grand Cayman subsidiary (name), transferred ownership of the yacht to this subsidiary and registered the yacht in Georgetown, Grand Cayman. Since registry of the yacht under a foreign flag, the yacht has been kept in U.S. waters except for several voyages. Your client plans to sell or charter the vessel to residents of the United States and wants to know whether the yacht will be dutiable.

The determination of whether or not a yacht is dutiable when it has previously been subject to Customs entry and payment of duty is dependent on whether it has been exported from the United States after its first importation. If it has been exported, it is again dutiable as an importation under item 696.05 or 696.10, Tariff Schedules of the United States. Exportation, in this context, is defined as occurring when the yacht is severed from the mass of things belonging to this country with the intention of being united with the mass of things belonging to some foreign country (see 113.55(a), Customs Regulations).

The circumstances described in your letter indicate that this yacht has not been exported, after its first importation, since it merely left the United States after duty was paid on pleasure cruises with no changes in ownership while abroad or other means of severing the yacht from the mass of things belonging to this country with the intention of uniting it to the mass of things belonging to some foreign country. Accordingly, the yacht would not be dutiable a second time if sold or chartered under the circumstances you describe.

(T.D. 78–320)

Applicability of "Manufacturing Clause" of the Copyright Act to a Book Consisting of Pictures and Partially Protected Text

Date: April 11, 1978
File: CPR–5–R:E:R
708612 0

DEAR ——: With your letter of March 8, 1978, you enclosed a copy of a mockup of the book (title), which was compiled by your client (name). As it is your client's intention to have the book printed outside the United States, you asked if the book would be prohibited entry into the United States pursuant to section 601(a) of the Copyright Act, 17 U.S.C. 601(a). In general, section 601(a) prohibits the importation and public distribution in the United States of a work authored by a U.S. national or domiciliary consisting preponderantly of nondramatic literary material that is in the English language, unless the portions consisting of such material have been manufactured in the United States or Canada.

Our review of the mockup indicates that the work consists of 347 pages, almost equally divided between pictures and text. It is a compilation of the works of various artists and authors. The text material appears on alternate pages with full page pictures which illustrate the particular essay or poem that appears on the opposite

page. About 92 of the 165 pages of text are in the public domain in this country. About 65 pages of the text material are protected by U.S. copyright. Some of the text material protected by U.S. copyright is written by foreign authors.

Where the work consists only partially of material protected by the manufacturing clause, the test is whether the work consists "preponderantly" of the protected material. The manufacturing requirement would apply if the English language nondramatic literary text exceeds the pictorial material in importance, even though more pages of the book might be devoted to the pictures than the text. However, in this case the full page illustrations of nautical scenes appear to equal the text in importance. The pictures greatly enhance the aesthetic quality of the work as a whole.

In view of the above, and considering the large portion of the text material that is in the public domain or authored by foreign nationals, we are of the opinion that the work in question, printed outside the United States and bearing the notice of copyright, would not be prohibited entry into the United States by the manufacturing clause of the Copyright Act.

(T.D. 78–321)

Foreign Currencies—Variances from Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 78–237 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Japan yen:	
September 5, 1978	$0.005259
September 6, 1978	.005263
September 7, 1978	.005234
September 8, 1978	*
Spain peseta:	
September 5, 1978	$0.013628
September 6, 1978	.013592
September 7, 1978	.013550
September 8, 1978	.013503

Switzerland franc:

September 5, 1978	$0.618429
September 6, 1978	.618812
September 7, 1978	.618238
September 8, 1978	.612370

LIQ-3-O:D:S

Date: September 18, 1978

* No variance this date, use quarterly rate.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-322)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rail, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:

September 4–8, 1978	$0.588097

Hong Kong dollar:

September 4, 1978	Holiday
September 5, 1978	$0.2110
September 6, 1978	.2100
September 7, 1978	.2100
September 8, 1978	.2104

Iran rial:

September 4–8, 1978	$0.0142

Philippines peso:

September 4–8, 1978	$0.1368

Singapore dollar:

September 4, 1978	Holiday
September 5, 1978	$0.4459
September 6, 1978	.4445
September 7, 1978	.4445
September 8, 1978	.4447

Thailand baht (tical);
September 4–8, 1978..... $0.0505

LIQ-3-O:D:S
Dated: September 18, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78–323)

Customhouse Broker License—Suspension

Suspension with prejudice of customhouse broker license, number 4139

Notice is herby given that the Commissioner of Customs on September 11, 1978, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111 of the Customs Regulations, as amended, upon the specific request of Mark A. Mena, Houston, Tex., suspended with prejudice for a period of 6 months individual customhouse broker's license, No. 4139 issued to him on June 23, 1969, for Customs District No. 22 (Houston). The Commissioner's decision is effective as of September 11, 1978.

G. R. DICKERSON,
Acting Commissioner of Customs.

(T.D. 78–324 through T.D. 78–328)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

Dated: September 19, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78–324)

Generalized System of Preferences: Substantial Transformation; Fish Lures

Date: April 26, 1978
File: R:CV:S DAL
055533

DEAR ——: This is in reference to your letter of February 13, 1978, on behalf of (name), Inc., in which you requested a ruling as to the applicability of the Generalized System of Preferences (GSP) to certain fish lures manufactured in Mexico. Specifically, you inquired as to whether the value of materials imported into Mexico from the United States could be added to the direct costs of processing operations in computing the 35 percent requirement imposed by the GSP.

In the situation you described, your client manufactures or purchases the U.S. articles necessary to the production of the artificial bait, and exports them to a company which it owns in Mexico. The fishing lures manufactured in Mexico, which are produced in a variety of colors and sizes, consist of hollow-molded plastic bodies in the shape of fish with hooks and other hardware attachments affixed thereto. The finished lures are classifiable under item 731.60, Tariff Schedules of the United States (TSUS), and are eligible for duty-free treatment under the GSP.

In Mexico, two plastic body halves are glued to each other (along with a lead ball or a hollow bead) and then trimmed to remove all excess glue or plastic which may have accumulated. The assembled lure bodies are then painted in a variety of patterns and colors so that they resemble small fish of different types. After the paint has dried, the lures are further processed by assembling the lure bodies with the appropriate hardware (i.e., eye screws, snap swivels, grommets, and hooks). You note in your letter that fishing lures can be distinguished from lure bodies by the fact that the former is capable of catching fish while the latter is not. At issue is whether the painted lure body is a substantially transformed constituent material of the fishing lure which is exported to the United States such that its value may be utilized in the computation of the 35 percent eligibility criterion.

In order for an eligible article to qualify for duty-free treatment under GSP, the sum of (1) the cost or value of materials produced in a beneficiary developing country (BDC), and (2) the direct costs of processing operations, or any combination of the two must be equal to or greater than 35 percent of the appraised value of the article. In order for materials which are not wholly the growth, product or manufacture of the BDC to be included within the 35 percent requirement imposed by the GSP, they must undergo a substantial transformation into new and different articles of commerce. These intermediate constituent materials must then be used in the production of an article of the BDC which is exported directly to the United States.

The unpainted lure body is the result of an assembly operation which precludes the various component parts from being considered (for GSP purposes) substantially transformed into a constituent

material of the fish lure exported from Mexico. The painting of the lure body, on the other hand, results in a substantial transformation since it is an operation which endows the fish lure with the characteristics necessary to attract fish. To be resolved, therefore, is whether the affixing of hooks, spinners and other articles to the painted lure body substantially transforms the painted lure body into a new and different article of commerce. We are of the opinion that no such transformation takes place, and that the value of the painted lure body may not be added to the direct costs of processing in determining whether the completed fishing lure meets the 35 percent GSP requirement. It is our considered opinion that the painted lure body is an unfinished article which, when hooks and other sundries are attached to it, results in a finished article (i.e., a fish lure).

The painted lure body is an essentially completed product which merely requires the addition of hooks and other sundries to make it into a fish lure. The addition of these parts gives the lure body qualities it did not previously have (i.e., the ability to catch fish), but the article was nevertheless a lure for fish before the addition of the hooks. Since the lure body is an unfinished fish lure, the finishing operations cannot qualify it as a substantially transformed constituent material includable in the 35 percent GSP requirement.

(T.D. 78–325)

Drawback: Status of Import Fees on Sugar, Syrup, and Molasses. Imposed by Presidential Proclamation 4547

Date: May 24, 1978
File: DRA-1-R:CD:D S
209022

DEAR ——: You asked whether the import fees on sugar, syrup and molasses imposed by Presidential Proclamation 4547, dated January 20, 1978, and issued pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624) are subject to drawback under the provisions of section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313). The fees in question have been incorporated into the Tariff Schedules of the United States (TSUS) as items 956.05, 956.15, and 957.15.

Section 528 of the Tariff Act of 1930, as amended (19 U.S.C. 1528), provides that no tax or other charge assessed against an article shall be considered a Customs duty unless the law imposing the tax or charge provides that it shall be treated as a Customs duty. Headnote 1 to part 3 of schedule 9, TSUS, and section 22(c) of the Agricultural Adjustment Act provide that the import fees proclaimed by the Presi-

dent pursuant to section 22 of that act are considered to be Customs duties.

Accordingly, the import fees imposed on sugar, syrup and molasses by Presidential Proclamation 4547 are subject to drawback upon compliance with the provisions of 19 U.S.C. 1313 and part 22 of the Customs Regulations.

(T.D. 78–326)

Diversion to Commercial Use of Articles Entered Under Item 832.00, TSUS

Date: May 26, 1978
File: ENT-1-01 R:E:E
305832 M

DEAR——: This is in reply to your letter of April 6, 1978, requesting a formal ruling on the question of the legality of the substitution or interchange of duty-paid imports with imports of identical items entered as emergency war material under item 832.00 of the Tariff Schedules (TSUS).

Previously, all of your company's sales were to the U.S. military. However, your company, with the approval of the State Department, will now be making foreign commercial sales of your military aircraft. Duty will be paid on low-value items to be used in connection with such foreign commercial sales. However, these identical items used in connection with sales to the U.S. military would be entered free of duty under item 832.00, TSUS. Although the equipment will be coded as to whether it is to be used for commercial sales or for the U.S. military, this coding system does not protect against production line pressures or last minute changes before delivery which might result in the substitution of a duty-free item for an identical duty-paid item or vice versa. When an item entered duty free as emergency war material under item 832.00, TSUS, for the U.S. military is diverted to commercial use, duty must be paid on such item, whereas there is no provision for the refund of duty when an item on which duty was paid is subsequently diverted to use for the U.S. military.

You, therefore, request permission for substitution of such articles when the need arises.

Basically, you are requesting the substitution of merchandise of the same kind and condition so as to satisfy the various entry requirements. Headnote 1 of the Tariff Schedules provides that all merchandise imported into the United States from outside shall be subject to duty, unless specifically exempted. With the exception of Public Law 95–159 dated November 8, 1977, which provides for the duty-free entry of Canadian petroleum received in exchange for domestic or duty-paid

imported petroleum exported from the United States to Canada, there is no provision of Customs law which exempts a person from the payment of duty if he substitutes in its place merchandise of the same kind and condition. The Customs law is very specific as to when substitution of merchandise is permitted. For instance, 19 U.S.C. 1313(b) permits for drawback purposes the substitution of imported duty-paid merchandise or domestic merchandise used in the manufacture of merchandise for export in place of imported merchandise of the same kind and quality as that used in the manufacture.

We sympathize with your problem, but are prevented by law from allowing the requested substitution of merchandise.

(T.D. 78-327)

Dutiable Status of Tools of Trade Repaired in Canada

Date: June 1, 1978
File: ENT-2-01 R:E:E
304921 M

DISTRICT DIRECTOR OF CUSTOMS,
St. Albans, Vt. 05478

DEAR SIR: This refers to your request of September 2, 1977, for clarification of the dutiable status of tools of trade repaired in Canada and returned to the United States. You ask whether they are entitled to entry free of duty under item 810.20 Tariff Schedules of the United States (TSUS), or whether the repairs are dutiable under item 806.20, TSUS. You also ask whether an informal entry may be filed for those articles.

We understand that many of the articles in question are farming and logging equipment and other agricultural machinery classified under item 666.00, TSUS. Articles classified under that item number may be entered free of duty regardless of whether or not repaired abroad.

Articles which would ordinarily be regarded as tools of trade, when exported solely for repairs, are dutiable on the cost or value of the repairs, under item 806.20, TSUS. They would not qualify for duty-free entry under item 810.20, TSUS, because the primary purpose of exporting the aritcles was to have them repaired.

When tools of trade used abroad as such are repaired to restore them to their condition and value when exported, we would consider such "running repairs" as nondutiable and permit duty-free entry under item 810.20, TSUS, because the primary purpose of exportation was to use the articles as tools of trade, and repairs made abroad were incidental to such use.

However, any repairs to those tools of trade which actually advanced their value or improved their condition in comparison with their value

or condition at the time of exportation, would subject to duty under item 806.20, TSUS.

A returning resident may apply his $100 exemption to any duties due on repairs. Also, any such articles for personal use which accompany a returning resident may be included in his baggage declaration regardless of value of the tools or the value of the repairs, if any.

Tools of trade may generally be entered under an informal entry, under section 143.21(d), Customs Regulations. Under sections 143.23 (c) and 148.8 of the regulations, an entry is not required when the importer submits a Customs form 3299.

If an article does not qualify as a tool of trade and is valued over $250, a formal entry is required even though the value of the repairs may be less than $250.

In summary:

1. Articles classified under item 666.00, TSUS, are free of duty even if repaired or improved in condition while abroad.
2. Articles which could qualify as tools of trade, if exported solely for repairs, are dutiable on the cost or value of the repairs.
3. "Running repairs" to articles used abroad as tools of trade are not dutiable.
4. Any repairs to such articles which enhance their value are dutiable under item 806.20, TSUS.
5. Tools of trade may be entered under an informal entry, or under a Customs form 3299 in place of an entry, or included in a baggage declaration if accompanying a returning resident and for personal use. A formal entry is required if an article does not qualify as a tool of trade and its value exceeds $250.
6. A returning resident may apply his $100 exemption to duties assessed on repairs.

(T.D. 78–328)

Drawback: "Same Kind and Quality" of Tires for Large Mining Machines

Date: August 1, 1978
File: DRA-1-09 R:CD:D T 209160

Reference: Your letter dated June 16, 1978, requesting a Customs ruling on the question of "same kind and quality" of tires

DEAR ——: With your letter of June 16, 1978, you have enclosed specifications for three types of tires which you state are used by your client, on large mining machines. You ask whether those tires would qualify for drawback under title 19, United States Code, section 1313(b).

Customs has held in prior cases that imported and domestic tires which are the same size, ply, and material are merchandize of the "same kind and quality" with the meaning of section 1313(b). The specification sheets furnished with your letter contain that informa-

tion. Therefore, if you client's substitution proposal contains its agreement to substitute imported and domestic tires on the basis of the same size, ply, and material, it should be acceptable for the purpose of establishing same kind and quality.

(T.D. 78-329)

Alcoholic Beverages and Tobacco Products—Customs Regulations Amended

Parts 10, 11, 12, 19, 22, 141, 143, 144, 145, 159, and 161, Customs Regulations, relating to alcoholic beverages and tobacco products, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

PART 11—PACKING AND STAMPING; MARKING

PART 12—SPECIAL CLASSES OF MERCHANDISE

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

PART 22—DRAWBACK

PART 141—ENTRY OF MERCHANDISE

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

PART 145—MAIL IMPORTATIONS

PART 159—LIQUIDATION OF DUTIES

PART 161—GENERAL ENFORCEMENT PROVISIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Various sections of the Customs Regulations relating to the importation of alcoholic beverages and tobacco products cite sections of the Internal Revenue Service regulations. This rule will amend the Customs Regulations to reflect the transfer of certain functions, powers and duties of the Internal Revenue Service in connection with the importation of these articles to the Bureau of Alcohol, Tobacco and Firearms (BATF), to make other conforming changes,

and to eliminate a requirement that importers of tobacco products prepare extra copies of certain Customs entry forms for BATF statistical purposes.

EFFECTIVE DATE: September 26, 1978

FOR FURTHER INFORMATION CONTACT: Todd J. Schneider, Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Treasury Department Order 221, dated June 6, 1972 (37 F.R. 11696), transferred certain functions, powers, and duties of the Internal Revenue Service relating to alcohol, tobacco, firearms, and explosives to the Bureau of Alcohol, Tobacco and Firearms. On April 15, 1975 (40 F.R. 16835), the Internal Revenue Service regulations formerly codified as 26 CFR parts 170 through 299 were redesignated as the regulations of the Bureau of Alcohol, Tobacco and Firearms and codified in 27 CFR parts 170 through 299. Because various sections of the Customs Regulations refer to the former Internal Revenue Service regulations, conforming amendments to reflect this change are necessary.

In addition, sections 19.16(g), 143.1(b), 143.26, and 144.38(b) of the Customs Regulations (19 CFR 19.16(g), 143.1(b), 143.26, 144.38(b)) require that an additional copy of either Customs form 7501, "Consumption Entry;" Customs form 5119–A, "Informal Entry;" or Customs form 7505, "Duty Paid Warehouse Withdrawal for Consumption," marked or stamped "For Internal Revenue Purposes," be presented for each entry for consumption, or withdrawal from warehouse for consumption, of cigars, cigarettes, or cigarette papers or tubes, when the entry or release from Customs custody of those articles is subject to part 275 of the Internal Revenue Service regulations (26 CFR, pt. 275) and tax is payable to Customs.

This requirement was based on former section 275.81 of the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR 275.81), previously section 275.81 of the Internal Revenue Service regulations (26 CFR 275.81). This section required an importer of cigars, cigarettes, and cigarette papers and tubes to prepare an extra copy of the appropriate Customs form for each entry for consumption, or withdrawal from warehouse for consumption, of those articles and file it with Customs for transmittal to the assistant regional commissioner of the Internal Revenue Service of the region where the Customs district is located.

Until recently, the Bureau of Alcohol, Tobacco and Firearms needed the extra copy of the Customs forms to maintain statistics on

importations of tobacco products. However, through cooperation of Customs, the Bureau of Alcohol, Tobacco and Firearms, the Bureau of the Census, and the International Trade Commission, it no longer is necessary for importers of cigars, cigarettes, and cigarette papers and tubes to prepare an extra copy of the Customs forms. Statistics now may be obtained directly from the Bureau of the Census.

Therefore, on June 14, 1976, the Bureau of Alcohol, Tobacco and Firearms amended section 275.81 of its regulations (27 CFR 275.81) to dispense with the requirement for the extra copy of the Customs form (41 F.R. 23950). Section 275.81 now requires that certain specified internal revenue tax information be included on the Customs form when cigars, cigarettes, or cigarette papers or tubes enter the United States for consumption, or when they are withdrawn from warehouse for consumption.

Additionally, section 54.3, Customs Regulations, relating to bona fide gifts from members of the Armed Forces of the United States serving in a combat zone, was deleted by T.D. 76–268 on September 24, 1976 (41 F.R. 41911). Therefore, it also is necessary to remove the reference to this section in section 11.3 of the Customs Regulations (19 CFR 11.3).

The following sections of the Customs Regulations are amended to reflect the foregoing changes:

Customs Regulations and 19 CFR section:	*Relating to—*
10.99	Importations of ethyl alcohol for nonbeverage purposes.
11.1(b)	Packing and stamping of cigars and cigarettes.
11.2a	Release from Customs custody of cigars, cigarettes, cigarette papers or tubes without payment of tax.
11.3	Package and notice requirements for cigars, cigarettes, and cigarette papers and tubes.
11.7	Importation of distilled spirits and other alcoholic beverages in bottles and similar containers.
12.37(c)	Blending or rectifying of wines or distilled spirits in manufacturing warehouses, or the bottling of imported distilled spirits in manipulation warehouses.
19.16 (a) and (g)	Cigar-manufacturing warehouses.
22.23(e)	Drawback procedures for medicinal preparations and flavoring extracts
22.25	Drawback claims for alcohol used in manufacturing.
141.61(h)	Entry of cigars, cigarettes, or cigarette papers or tubes.
141.102(b)	Transfer of distilled spirits in bulk to the bonded premises of a distilled spirits plant.
143.1(b)	Consumption entries of cigarettes, cigars, or cigarette papers or tubes.

Customs Regulations atd 19 CFR section—Continued	*Relating to—*
143.26	Informal entries of cigars, cigarettes, or cigarette papers or tubes.
144.38 (b) and (c)	Withdrawals for consumption of cigars, cigarettes, or cigarette papers or tubes.
145.13(b)	Release of cigars, cigarettes, or cigarette papers or tube for a manufacturer without payment of tax.
145.53	Importations of firearms, munitions of war, and related articles.
159.4(b)	Methods for the computation of duties and taxes on distilled spirits.
161.2(a)	Laws enforced by the Customs Service for other agencies.

Because these amendments merely conform the Customs regulations to the regulations of the Bureau of Alcohol, Tobacco and Firearms and relieve a filing requirement, notice and public procedure thereon are unnecessary and good cause exists for dispensing with the delayed effective date requirements of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 10, 11, 12, 19, 22, 141, 143, 144, 145, 159, and 161 of the Customs Regulations (19 CFR pts. 10, 11, 12, 19, 22, 141, 143, 144, 145, 159, and 161) are amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Section 10.99 is amended to read as follows:

10.99 Importation of ethyl alcohol for nonbeverage purposes.

1. (a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of 185 degrees or more of proof under item 427.88, Tariff Schedules of the United States, the importer or his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only.

(1) Customs shall release the alcohol upon deposit of estimated duty, if any, and without payment of the internal revenue tax, only upon receipt of an application on Alcohol, Tobacco and Firearms (ATF) form 2609 (5110.16) submitted by the proprietor of the distilled spirits plant and approved by the appropriate Alcohol, Tobacco and Firearms officer. The ATF form 2609 (5110.16) allows the transfer of the alcohol under internal revenue bond to the bonded premises of the proprietor's plant for nonbeverage use.

(2) Before release of the alcohol from Customs custody, the Customs officer shall prepare four copies of ATF form 236 (5110.27) when the alcohol is to be removed in packages, or five copies when the alcohol is to be removed by pipeline or by bulk conveyance. The ATF form 236 (5110.27) should be appropriately modified to show:

(i) Serial number and date of the ATF form 2609 (5110.16);
(ii) Customs port of entry and entry number;
(iii) Consignee;
(iv) Kind of spirits;
(v) Name of the importer;
(vi) Country of origin (manufacture or production);
(vii) Method of transfer;
(viii) Elements of bulk gauge (if any);
(ix) Quantity to be transferred;
(x) Customs seals used (if any);
(xi) Date of release; and
(xii) Signature and title of the Customs officer instead of the proprietor.

When shipments are made in tank cars or trucks, the Customs officer shall report details of the gauge of each car or truck separately. In the case of barrels, drums, or similar portable containers, he shall show details of the gauge on three copies of ATF form 2630 (5110.45). The Customs officer also shall note on ATF form 236 (5110.27) the rate of Customs duty paid and the rate which would have been applicable had the alcohol been imported for beverage purposes. Upon compliance with Customs entry requirements and completion of the appropriate ATF forms, the Customs officer shall release the alcohol for transfer to the distilled spirits plant.

The Customs officer shall retain one copy of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any); forward one copy of ATF form 236 (5110.27) to the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, at the address shown on ATF form 2609 (5110.16); and forward the original and remaining copy (or copies) of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any) to the Alcohol, Tobacco and Firearms officer at the distilled spirits plant.

(3) Before a shipment in a tank car or truck is released, a Customs officer shall seal all openings affording access to the alcohol with Customs seals in a manner which prevents unauthorized removal of the alcohol.

(4) When the distilled spirits plant is equipped with suitable dock facilities, the alcohol, subject to all requirements of the Customs laws and regulations, (i) may be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into locked empty storage tanks on the bonded premises of the distilled spirits plant; or (ii) may be transferred directly into empty storage tanks on the premises, if the tanks are equipped with suitable measuring devices for correctly indicating the actual contents and the outlets are locked. In all pipeline transfers, the alcohol shall be transferred under Customs supervision, gauged immediately by a Customs officer, and then released for deposit in the distilled spirits plant. The Customs officer shall report the details of the gauge for internal revenue

purposes on ATF form 236 (5110.27). Copies of the form shall be distributed as prescribed in subparagraph (2) of this paragraph.

(b) If ethyl alcohol is to be withdrawn from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, either before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of section 141.102(d) of this chapter (when deposit of estimated duties or taxes is not required), an appropriate permit on ATF form 1444 (5150.33), shall be filed with the district director. The permit also may cover future withdrawals at that port, pursuant to appropriate entry in each case. The Customs officer who gauges the alcohol shall prepare three copies of a report of gauge on ATF form 2629 (5110.26). The alcohol then may be released for shipment to the governmental agency named in the permit, ATF form 1444 (5150.33). The Customs officer shall make the appropriate notation of the withdrawal on ATF form 1444 (5150.33), and shall state the permit number of the ATF form 1444 (5150.33) involved on each copy of ATF form 2629 (5110.26). The Customs officer shall retain the original of the ATF form 2629 (5110.26) with the permit on ATF form 1444 (5150.33), and shall forward one copy of ATF form 2629 (5110.26) to the governmental agency involved and one copy to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

Cigars, cigarettes, and cigarette papers and tubes may be released from Customs custody without payment of any applicable Internal Revenue tax upon presentation of the Customs entry or withdrawal form and three copies of Alcohol, Tobacco and Firearms form 2145 (5200.11) or 3072 (5210.14), certified by the appropriate regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms. The Customs officer shall complete the notice of release, retain one copy, send one copy to the regional regulatory administrator, and return one copy to the manufacturer. The release may not be made under a mail entry. See section 145.13(b) of this chapter.

3. The first and last sentences of section 11.3 are amended by substituting "(27 CFR pt. 275)" for "(26 CFR pt. 275)." The third sentence of section 11.3 is amended by deleting the reference to section 54.3 of the Customs Regulations.

4. The section heading the first sentence of section 11.7 are amended to read as follows:

11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Bureau of Alcohol, Tobacco, and Firearms.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Bureau of Alcohol, Tobacco and Firearms relating to strip stamps and other matters. (27 CFR, pts. 5, 201, and 251). * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

(c) Paragraphs (a) and (b) of this section are not applicable to withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands. Provisions for the release free of

tax of distilled spirits, denatured distilled spirits, and products containing denatured spirits produced and withdrawn in the Virgin Islands are found in subpart O of part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR, pt. 250, subpart O).

(d) Upon completion of the applicable procedures outlined in this section, the entry shall be liquidated with the assessment of duty at the appropriate rate, if any, and without the assessment of internal revenue tax.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 11—PACKING AND STAMPING; MARKING

1. The first sentence in paragraph (b) of section 11.1 is amended by substituting "Bureau of Alcohol, Tobacco and Firearms" for "Internal Revenue Service".

2. Section 11.2a is amended to read as follows:

11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. Paragraph (c) of section 12.37 is amended by substituting "Bureau of Alcohol, Tobacco, and Firearms" for "Alcohol Tax Unit, Internal Revenue Service".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The third and fourth sentences of paragraph (a), and paragraph (g) of section 19.16 are amended to read as follows:

19.16 Cigar-manufacturing warehouses.

(a) * * * When tax-paid cigars are returned to the manufacturing department of a cigar manufacturing warehouse from which withdrawn, in accordance with section 275.172 of the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR 275.172), they shall be accounted for properly and shall not be released for consumption except upon compliance with all applicable regulations. Customs shall keep a record of all cigars so returned to the manufacturing department, together with a copy of the schedule on Alcohol, Tobacco and Firearms form 3069 (5200.7).* * *

* * * * * * *

(g) Before removal from the bonded premises for consumption, each package of cigars shall be marked by legibly imprinting or branding on the package, or on a label securely affixed to the package, the statement (for Customs purposes) "Made in No. ____, Customs bonded manufacturing warehouse, class 6"; and as required in regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR, pt. 275), a statement of the quantity and classification or class designation (for large cigars) of the cigars contained in each package.

(1) Upon withdrawal (release) for consumption of cigars subject to internal revenue tax, the manufacturer or proprietor of the class 6 warehouse shall pay the applicable tax to Customs by return, as provided in regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR, part 275). The manufacturer or proprietor shall

file two copies of the return on an appropriately modified Customs form 7505 (yellow) and one copy of Customs form 7505–A with the district director of Customs of the port where the warehouse is located. One return shall cover all cigars withdrawn (released) on any one day and shall be filed on the first business day after the date of withdrawal (release). The taxes covered by the return shall be secured by the Proprietor's Manufacturing Warehouse Bond, Customs form 3583.

(2) The taxpayer shall prepare the return to show, for tax purposes, the quantity and kind of cigars, the applicable rate of tax, and the amount of tax (see 27 CFR 275.81). The taxpayer, or his authorized agent under whose bond release is made, shall sign the return. The return will not be required to duplicate the information required for duty purposes under subpart D of part 144 of this chapter. One copy of the Customs form 7505 (yellow) shall be returned to the taxpayer, and one copy shall be retained by Customs. When accepted, the return shall be treated as an entry and liquidated upon payment of the taxes on the cigars and charges, if any.

* * * * * * *

(R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (5 U.S.C. 301, 19 U.S.C. 66, 1484, 1498, 1624))

PART 22—DRAWBACK

1. The second and fourth sentences of paragraph (e) of section 22.23 are amended to read as follows:

22.23 Procedure.

* * * * * * *

(e) * * * If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for the domestic drawback, the manufacturer shall submit two copies of a statement setting forth that fact to the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located. * * * The regional regulatory administrator shall verify the statement, forward the original of the document to the port designated, and retain the copy. * * *

* * * * * * *

2. Section 22.25 is amended to read as follows:

22.25 Bureau of Alcohol, Tobacco and Firearms certificates and extracts.

(a) *Request.* The drawback claimant or manufacturer shall make a written request to the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms where the alcohol used in manufacture was withdrawn, for the issuance of a tax-paid certificate on Alcohol, Tobacco and Firearms (ATF) form 5100.4, to the regional commissioner of Customs with whom the drawback claim will be processed.

(b) *Contents.* The request must state:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs form 7545.* If the request is accompanied by a Customs form 7545 showing any of the information required in paragraph (b), that information need not be repeated in the request.

(d) *Articles manufactured with the use of rectified or redistilled alcohol.* For drawback on flavoring extracts or medicinal or toilet preparations manufactured with the use of rectified or redistilled alcohol, the ATF form 5100.4 must state, in addition to other required information:

(1) Name of the rectifier;

(2) Quantity in wine gallons of rectified alcohol produced;

(3) Proof;

(4) Quantity in proof gallons produced;

(5) Amount of tax paid;

(6) Date of withdrawal; and

(7) Serial numbers of the rectifier's stamps covering the alcohol.

(e) *Extracts from Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in a certificate on ATF form 5100.4 is required for the liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 141—ENTRY OF MERCHANDISE

1. Paragraph (h) of section 141.61 is amended to read as follows:

141.61 Completion of entry papers.

* * * * * * *

(h) *Cigars, cigarettes, or cigarette papers or tubes.* On each entry of cigars, cigarettes, or cigarette papers or tubes (as those articles are defined in 27 CFR, Pt. 275), which is subject to the regulations of the Bureau of Alcohol, Tobacco and Firearms, the separate statement for tax purposes required by section 275.81 (27 CFR 275.81) shall be made on the entry form.

2. Paragraph (b) of section 141.102 is amended to read as follows:

141.102 When deposit of estimated duties not required.

* * * * * * *

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant under the provisions of section 5232(a), Internal Revenue Code of 1954, as amended (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR, Pt. 251), by filing an approved original copy of Alcohol, Tobacco and Firearms form 2609 (5110.16) with the entry or withdrawal for consumption, instead of depositing taxes.

* * * * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. Part 143 is amended by deleting sections 143.1(b) and 143.26 and marking those sections "Reserved."

(R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (5 U.S.C. 301, 19 U.S.C. 66, 1484, 1498, 1624))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. Section 144.38 is amended by deleting paragraph (b) and marking that paragraph "Reserved" and by amending the last sentence of paragraph (c) to read as follows:

144.38 Withdrawal for consumption.

* * * * * * *

(c) Information to be shown on withdrawal. * * * Additionally, on each withdrawal of cigars, cigarettes, or cigarette papers or tubes subject to internal revenue tax, the statement for tax purposes required by section 275.81 of the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR 275.81) shall be made on the withdrawal form.

* * * * * * *

(R.S. 251, as amended sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 145—MAIL IMPORTATIONS

1. Paragraph (b) of section 145.13 is amended by subtsituting "27 CFR Part 275" for "26 CFR Part 275".

2. Section 145.53 is amended by substituting "27 CFR Parts 47, 178, 179" for "26 CFR Parts 178–180".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1924))

PART 159—LIQUIDATIONS OF DUTIES

1. Paragraph (b)(1) of section 159.4 is amended by substituting "Bureau of Alcohol, Tobacco and Firearms" for "Internal Revenue Service".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 161—GENERAL ENFORCEMENT PROVISIONS

1. Paragraph (a)(1) of section 161.2 is amended by substituting "Bureau of Alcohol, Tobacco and Firearms" for "Internal Revenue Service".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Approved: September 11, 1978.

G. R. DICKERSON,
Acting Commissioner of Customs.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, Sept. 26, 1978. (F.R. 43452)]

U.S. Customs Service

Protest Review Decisions

The following are decisions made by the U.S. Customs Service on protests filed under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), and with respect to which further review was requested and granted under sections 174.23 and 174.24 of the Customs Regulations.

Dated: September 15, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(P.R.D. 78–23)

Reliquidation Under 19 U.S.C. 1520(c)(1): Failure To Produce Acceptable Documentation for Duty-Free Entry

Date: April 17, 1978
File: PRD–2 R:E:E
305793 K

Re Decision on application for further review of protest No. 10017003624.

REGIONAL COMMISSIONER OF CUSTOMS,
New York, N.Y. 10048.

DEAR SIR: This protest is against your denial of requests to reliquidate 20 entries (name) under the provisions of section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)). All the requests were made more than 90 days after the dates of liquidation.

The action alleged to be correctable under this provision was the refusal of Customs officers to accept certain certificates submitted by the importer as being in compliance with the requirements of items 319.01–319.07, TSUS, under which certain fabrics are free of duty if, prior to exportation, they have been certified by an official of a government agency of the producing country to have been made on a hand loom by a cottage industry.

Although the merchandise was inspected prior to the dates of exportation, the Indian Government certifications were all dated subsequent to those dates. Customs officers rejected the importer's contention that those certifications were valid because they related back

to the dates on which the merchandise was inspected, and that all the certifications showed that the certifying officer was invariably the same officer who performed the inspections.

We do not believe that the importer's attorney has established that the alleged error in classification was caused by a clerical error, mistake of fact or inadvertence within the purview of section 520(c)(1). Customs officers had all the documents relating to inspection and certification of the merchandise at the time they classified it under dutiable provisions of the Tariff Schedules. Their decision that the certifications failed to satisfy a provision in the Tariff Schedules which would have permitted classification free of duty was a legal determination, which is specifically excluded from the scope of section 520(c)(1). The provisions of that section may not be invoked to extend the time period within which to file a protest under section 514 of the tariff act.

Accordingly, you are hereby directed to deny the protest in full. Your files are returned herewith.

(P.R.D. 78–24)

Reliquidation: Failure of Customs To Accept Proper GSP Form A

Date: April 26, 1978
File: PRO-2 R:E:E
305573 K

Re Decision on application for further review of protest No. 20027000416.

DISTRICT DIRECTOR OF CUSTOMS,
New Orleans, La. 70130

DEAR SIR: This decision concerns a protest against your liquidation of consumption entry No. 244520 as dutiable, for failure to submit an acceptable certificate of origin, form A, which was required to qualify the merchandise for duty-free treatment under the generalized system of preferences (GSP). The merchandise was exported from Guatemala.

On September 15, 1976, the importer's customhouse brokers presented a form A which an import specialist rejected because it was not completed on guilloche pattern paper. On Spetember 17, the import specialist learned of a headquarters telegram dated August 27, 1976, which authorized acceptance of forms A on nonguilloche pattern paper for merchandise exported from certain countries, including Guatemala, through Ocotober 31, 1976. Had the import specialist been aware of that ruling on Septermber 15, she would have accepted the form A on that date and granted GSP.

The brokers claim that they resubmitted the form A to Customs when they found out that it was acceptable. However, they have no

receipt for it, and the import specialist did not receive it the second time. No copies of the original form A are available and undocumented attempts to obtain a duplicate form A have been unsuccessful.

There seems to be no question that the import specialist concerned received the original form A, on September 15, and that she rejected it because of an error or mistake of fact on her part. While it is less clear that the form was resubmitted, we believe the case can be resolved without deciding that question, and without requiring the importer to submit a duplicate form A, or document his inability to do so.

Under normal circumstances, of course, a form A (or any document needed to support a claim for free entry) is associated with, and made a part of the entry package when it is presented to Customs in acceptable form. The absence of the document from the entry package, and a bond charge for its production, certainly create a strong presumption that it was not received, under normal circumstances. However there is no legal requirement that the free-entry document be physically connected with the entry package. Section 10.173(a) of the Customs regulations simply requires that "* * * the importer * * * shall file with the district director in connection with the entry the Generalized System of Preferences Certificate of Origin Form A, as evidence of the country of origin." So long as an acceptable form A was "filed," the requirements of the regulation were met.

We see no need for the import specialist concerned to formally attest to the initial receipt of the form A, and her reason for rejecting it. Our protest review, being administrative in nature, is not governed by the rules of procedures and evidence that would apply in a Customs Court review of the protest.

Accordingly, under the special and unusual circumstances of this case, you are authorized to cancel the bond charge for the form A, reliquidate the entry, and refund the duties. Your file is returned herewith.

(P.R.D. 78-25)

Classification: Unspliced Dielectric Rubber Sleeves

Date: May 11, 1978
File: CLA-2:R:CV:MA
054730 JAS

Re Decision on application for further review of protest No. 45037000004.

DISTRICT DIRECTOR OF CUSTOMS,
St. Louis, Mo. 63105

DEAR SIR: This protest was filed against your classification of certain merchandise under the provision for seamless tubing wholly or

almost wholly of rubber, in item 771.55, Tariff Schedules of the United States (TSUS), dutiable at the rate of 10 percent ad valorem. The subject merchandise is covered by 1976 consumption entries 109083, 109084, and 109620, and 1977 consumption entries 100862, 102805, and 103932. All entries were liquidated on May 6, 1977.

The merchandise is described as unspliced dielectric rubber sleeves from West Germany. They are imported in two sizes, the DS 32 dielectric silicon 32 mm (1½-inch diameter) and the DS 98 dielectric silicon 98 mm (4-inch diameter). Protestant claims the merchandise is classifiable under the provision for electric insulators of rubber, in item 773.30, Tariff Schedules of the United States (TSUS), dutiable at the rate of 5 percent ad valorem.

The sleeves are claimed to be used as insulators for electrodes on an electronic surface coating machine. The machine treats surfaces of materials used in packaging products to produce better adhesion qualities in these materials. It includes, among other things, an electrode to which high voltage is applied, and a grounded electrode in the form of a smooth roller covered with the dielectric sleeve. The material to be treated passes between the electrodes. The sleeves are imported in lengths up to 68 inches and then cut to size as needed, usually 36 inches to 48 inches. They do not require fittings or other special adaptation but are merely slipped over the charged electrode or the grounded electrode as the process requires. The dielectric sleeves prevent the current from passing between the electrodes, but do allow the electrons to pass. The surface coating machine will not function as designed without the sleeves.

You relied on the case of *Naftone* v. *United States* (C.D. 4294 (1971)), in holding that the merchandise was not classifiable in item 773.30, TSUS. In *Naftone*, the court held that only insulating articles are classifiable in item 773.30. The merchandise in that case, polycarbonate film, imported in rolls up to 30,000 meters, was held to be an insulating material. You conclude that in their condition as imported the dielectric sleeves are an insulating material.

We agree that for tariff purposes an "insulator" is an specific device or piece of equipment and is something distinct from "insulation" or "insulating material." See "Summaries of Trade and Tariff Information, 1968," schedule 7, volume 7, page 133. Consequently, we agree that the dielectric sleeves are not classifiable in item 773.30, TSUS.

Schedule 7, subpart 12B, headnote 1(c), TSUS, applicable to item 771.55, provides in part that only seamless tubing of rubber which is cut into lengths over 15 inches may be classified thereunder. In our opinion, item 771.55 specifically describes the dielectric sleeves in question. We therefore agree that they were properly classified under the provisions of item 771.55, TSUS.

Accordingly, the protest should be denied. A copy of this decision may be furnished the protestant.

(P.R.D. 78–26)

Classification: Flat-Bed Trailer Modules Designed To Be Drawn by a Motor Vehicle

Date: May 25, 1978
File: CLA–2:R:CV:MA
054916 HL

Re Decision on application for further review of protest Nos. 14017000094 and 14017000095.

DISTRICT DIRECTOR OF CUSTOMS,
Norfolk, Va. 23510.

DEAR SIR: This ruling concerns the protest filed against your decision classifying modular sections of heavy lift trailers from West Germany under the provision for vehicles (including trailers), not self-propelled, not specially provided for, and parts thereof, in item 692.60, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8 percent ad valorem. The merchandise is covered by consumption entry No. 122389 of September 21, 1976, which was liquidated April 29, 1977.

The subject merchandise, invoiced as heavy-lift semitrailers, consists of flat-bed trailer modules designed to be drawn by a motor vehicle such as a truck tractor, by means of a gooseneck, or drawbar. In its condition as imported, each trailer module is without auxiliary motive power, truck tractor, or gooseneck or drawbar for attachment to a truck tractor. The record shows that each module is constructed so that all its own weight and that of its load will rest upon its own wheels. Such load will include long and irregularly shaped loads such as poles, logs, and pipes. The subject modules can be joined together to form longer trailers.

The protestant claims that the subject merchandise is part of a tractor-trailer combination and, hence, classifiable under the provision for parts of motor vehicles in item 692.27, TSUS, and dutiable at the rate of 4 percent ad valorem. Protestant apparently relies upon headnote 1(b), schedule 6, part 6, subpart B, TSUS, which states that "automobile truck tractors imported with their trailers are, together with their trailers, classifiable in item 692.02, but, if such tractors or trailers are separately imported, they are classifiable in item 692.27."

The Society for Automotive Engineers defines the following terms in SAE J687c:

> "Truck Tractor—Truck tractor means every motor vehicle designed primarily for drawing truck trailers and constructed so as to carry part of the weight and load of a semitrailer.

"Semitrailer—A semitrailer is a truck trailer equipped with one or more axles, and so constructed that the front end and a substantial part of its own weight and that of its load rests upon another vehicle.

"Full Trailer—A full trailer is a truck trailer constructed so that all its own weight and that of its load rests upon its own wheels."

The record shows that the subject trailer modules conform to the SAE definition of a full trailer in that each module is constructed so that its own weight and that of its load rests upon its own wheels. The complete trailer, which can consist of several modules, can be pulled by either a truck, truck tractor, or tractor. In contrast, a semitrailer can only be drawn or pulled by a "fifth wheel" truck tractor designed to carry part of the wieght and load of the semitrailer.

In *Border Brokerage Company* v. *United States* (42 Cust. Ct. 343, Abs. 62955 (1959)), the court indicated that, in order to constitute an automobile truck, the engine of a truck tractor must be "capable of being joined to the trailer, and to carry a portion of the load * * *" Since this decision was known to Congress at the time of the enactment of the Tariff Schedules of the United States (1963), it is our position that headnote 1(b), schedule 6, part 6, subpart B, TSUS, envisions a tractor-trailer combination in which a truck tractor carries part of the weight and load of a semitrailer which, by definition, does not carry all of its own weight and that of its load. Pursuant to headnote 1(b), therefore, a semitrailer imported separately is classifiable under item 692.27, TSUS, as part of an automobile truck.

Notwithstanding the appellation "semitrailer," the subject trailer modules constitute full trailers classifiable under the eo nomine provision for trailers in item 692.60, TSUS.

In a letter to protestant dated Sepetmber 24, 1971, file No. 013773 RM, we held 10-line bogies designed to be used as rear units of semitrailers to be classifiable under item 692.27, TSUS. The similarity between those 10-line bogies and the subject trailer modules prompted a review of our 1971 letter. This review disclosed that the 10-line bogies are, in fact, full trailers conforming to the SAE definition. However, their arrangement as described in the original inquiry induced our belief that the 10-line bogies were not constructed to carry their own weight and that of their load on their own wheels. It now appears that the 10-line bogies could indeed carry their own weight and that of their loads on their own wheels individually, but not when arranged in such a way as to act as a semitrailer. Our letter of September 24, 1971, is hereby revoked insofar as it conflicts with our present position.

In view of our letter of September 24, 1971, the protest should be allowed. However, future importations of the subject trailer modules should be classified under item 692.60, TSUS, in accordance with this decision.

(P.R.D. 78–27)

Classification: Shotblasted Cast-Iron Cylinder Head Castings

Date: July 20, 1978
File: CLA–2:R:CV:MA
055056 HL

Re Decision on application for further review eo protest No. 3701–7–000016.

DISTRICT DIRECTOR OF CUSTOMS,
Milwaukee, Wis. 53202

DEAR SIR: This ruling concerns the protest filed against your decision classifying shotblasted cast-iron cylinder head castings as other internal combustion engine parts, advanced beyond cleaning, under item 660.54, Tariff Schedules of the United States (TSUS), dutiable at the rate of 5 percent ad valorem. The merchandise is covered by consumption entry No. 101905 of August 29, 1974, which was liquidated on May 20, 1977.

The protestant claims that the merchandise which was entered as rough iron castings of cylinder heads for internal combustion engines is classifiable as cast-iron parts of internal combustion engines, not alloyed and not advanced beyond cleaning, under item 660.50, TSUS, and entitled to duty-free entry. It is assumed that the subject castings are not malleable, and are machined, if at all, only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery.

Prior to importation, the subject merchandise is shotblasted. Shotblasting is a cleaning process whereby pellets or shot of grit, sand, or metal are directed at high speed at the surface of the object to be cleaned. In this particular case molded sand is said to be removed from the subject castings as a result of shotblasting.

The record shows that the instant shotblasting results in some measure of stress relieving, which is a reducing of residual stresses in a metal object performed usually be heating the object to a suitable temperature and holding for a sufficient time. ("Forging Industry Handbook 456" (Forging Industry Association, 1970)). Stress relieving, which in our opinion is an advancement beyond cleaning, results in uniform characteristics throughout a metal and increases its fatigue life. It is suggested therefore that the subject castings have been peened.

Peening is an advancing process similar to shotblasting which results in stress relieving. In peening, the size of the pellet or shot, the pellet hardness, the angle of impact, and the exposure time, are carefully regulated and controlled. The impact of the shot results in heating which, although not intended to significantly alter the micro-

structure, chemical composition, or physical properties of metal, does indeed affect the distribution of metallographic constituents. For instance, the peening of a metal will evenly distribute its atoms in such a way as to make uniform the metal's ductility.

In internal advice ruling No. 8–76 dated March 10, 1976, file No. 044174 RB, copy enclosed, we noted that the similarity between shotblasting and peening, which is a severe form of shotblasting, explains some incidental peening during shotblasting. We held, however, that as long as cleaning is the primary purpose of a shotblasting process, any unavoidable and incidental peening and consequent stress relieving does not result in an advancement beyond cleaning. In view of the carefully regulated conditions concurrent with peening, such incidental stress relieving caused by mere shotblasting could not be thorough.

We adhere to our prior ruling and hold that the subject shotblasted cylinder head castings are not advanced beyond cleaning, provided the primary purpose of the instant shotblasting was to clean the casting surface and not intended to do more.

Accordingly, the subject merchandise is classifiable under item 660.50, TSUS, and entitled to duty-free entry.

The protest should be allowed. The entry papers are attached.

(P.R.D. 78–28)

Entry: Date of Exportation of Sugar Subject to Presidential Proclamations 4463 and 4466

Date: December 9, 1977
File: PRO 4–0 R:E:E
304693 K

Re Decision on application for further review of protest No. 1303–7–000113.

DISTRICT DIRECTOR OF CUSTOMS,
Baltimore, Md. 21202

DEAR SIR: This decision concerns a protest filed against the rate of duty assessed in your liquidation of entry No. 104933 of November 2, 1976. The entry covered 7,000 long-tons of sugar which was laden at the port of Salaverry, Peru, on September 16–17, 1976. The vessel left Salaverry on September 17, and arrived at Pimental, Peru, on September 18, where it laded an additional 6,500 long-tons of sugar and sailed for the United States on October 5, 1976. You assessed duties on the entire quantity at the rate imposed by Presidential Proclamation 4463 of September 21, 1976.

That proclamation terminated a 1974 rate of duty on sugar and established a higher rate with respect to sugar entered, or withdrawn from warehouse for consumption on and after September 21, 1976.

Presidential Proclamation No. 4466 of October 4, 1976, modified the earlier proclamation by excluding from its provisions sugar exported to the United States before September 21, 1976, and entered on or before November 8, 1976.

The importer's attorney argues that the quantity of sugar laden at Salaverry should have been assessed with duty at the 1974 rate by virtue of Presidential Proclamatiou 4466, because that sugar was exported before September 21 and entered for consumption before November 8, 1976. He recognizes that the date of exportation from a foreign country has been construed to be the last day on which the vessel leaves that country's shores. Nevertheless, he argues that in construing "date of exportation" in connection with an exemption from duty which was imposed by Presidential Proclamation No. 4074 of August 15, 1971, we ruled (in a telegram of Sept. 3, 1971), that where a vessel lades merchandise at two or more ports within a country, the date of exportation for each shipment is the date upon which it left the port at which it was laden. He argues that to the extent that each proclamation exempts from its effect merchandise exported to the United States before 12:01 a.m. on a stated day, the interpretation we gave to that language under the former proclamation should control the interpretation to be given under Proclamation No. 4466.

We believe the two proclamations in question, and the legal authority for exempting certain articles from the duties imposed by the respective proclamations are distinguishable and therefore our ruling issued under the earlier proclamation may not be regarded as a precedent for cases arising under the later one, for several reasons.

First, Proclamation No. 4074 imposed a surcharge of 10 percent additional duty on certain merchandise entered, or withdrawn from warehouse, for consumption after 12:01 a.m., August 16, 1971. Unlike Proclamation No. 4466, Proclamation 4074 did not directly grant any exemption from the surcharge based upon a date of exportation.

Second, unlike Proclamation 4466, Proclamation 4074 authorized the Secretary of the Treasury to exempt particular articles from the surcharge either generally or as the product of a particular country, if he determined that such action was consistent with safeguarding our balance-of-payments position. That authorization was contained in section 4(a), subpart C, part 2 of the appendix to the Tariff Schedules of the United States (TSUS) which the proclamation added to the TSUS to implement that portion of the proclamation which imposed the surcharge.

Pursuant to that authority, the Secretary issued Treasury Department additional duty order No. 3, which in pertinent part, amended headnote 5, subpart C, part 2 of the appendix, TSUS, by adding a new section (h) which exempted from the surcharge articles

exported to the United States before 12:01 a.m., August 16, 1971. That order authorized the Commissioner of Customs to prescribe regulations and issue instructions needed to carry out the order. Under that authority, we issued the telegram of September 3, 1971, "*For the purposes of determining the date of exportation under the provisions of headnote 5(h) subpart C of part 2 of the appendix to TSUS.* * * *" (Italic added.)

The interpretation of "date of exportation" which that telegram prescribed was an attempt to alleviate a widespread financial hardship to importers whose merchandise had been exported before the surcharge was imposed and thus had no advance notice of the additional duties to which that merchandise would be subjected. In the case before us, on the other hand, the proclamation which imposed a higher rate of duty became effective before the vessel left the country of exportation.

The narrow exception to our usual interpretation of "date of exportation" was emphasized when the Secretary of the Treasury issued Treasury Department additional duty order No. 4 on December 18, 1971, which in part added a new section (i) to headnote 5, subpart C, part 2 of the appendix, TSUS, to exclude from the surcharge certain textiles exported to the United States on or after October 1, 1971. We instructed our field offices, in a telegram of January 26, 1972, concerning additional duty order No. 4, that the date of exportation was to be determined in accordance with a cited Customs regulation (now 152.1(c)), which, in pertinent part, defines the date of exportation as " * * * the actual date the merchandise *finally* leaves the country of exportation for the United States." (Italic added.) We also instructed our field offices that: "You will not repeat not use method authorized in Butel, September 3, 1971, for shipments by vessel where goods were laden at multiple ports within a single country."

Under the circumstances, we construe the date of exportation for the entire shipment of sugar as being October 5, 1976, the date the vessel left Peru on its voyage to the United States. Accordingly, duty was properly assessed at the rate imposed by Presidential Proclamation No. 4463, and you are directed to deny the protest in full.

U.S. Customs Service

Customs Penalty Decisions

The following decisions made by the U.S. Customs Service relate to fines, penalties, and forfeitures imposed for violations of the Customs laws. The decisions involve issues of sufficient general interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: September 19, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(C.P.D. 78-2)

Applicability of 19 U.S.C. 1595a to Real Property

Date: February 15, 1978
File: ENF-4-02.4 R:E:M
608388 JA

To: Dennis T. Snyder, Regional Counsel, Miami, Fla.
From: Assistant Commissioner Regulations and Rulings
Subject: Internal advice—applicability of 19 U.S.C. 1595a to real property.

This is in reply to your memorandum dated October 17, 1977 (ENF-8-08-CL:DTS), requesting internal advice as to the seizure. of real property under title 19, United States Code, section 1595a(a)

The question presented involves the storage of unlawfully imported marihuana in a pumphouse on a rural residential lot which also contain a dwelling house. Shortly before the marihuana was discovered, title to the property was placed in the name of the 2-year-old daughter of the girl friend of the man who possessed the marihuana.

Title 19, United States Code, section 1595a(a), provides in pretinent part:

> * * * every vessel, vehicle, animal, aircraft, *or other thing* used in, to aid in, or tofacilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced

> into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, *or other thing* or otherwise, shall be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment. (Italic supplied.)

The present language of 19 U.S.C. 1595a derives from the Customs Simplification Act, enacted in 1954, which repealed the existing provision and in lieu thereof enacted section 596 of the Tariff Act of September 1, 1954, c. 1213, section 502, 68 Stat. 1140. This statutory change was not intended to change the provision substantively but only to express more clearly the intent of the then existing law, enacted in 1935. (S. Rept. No. 2326, 83d Cong., 2d sess., in 3 United States Code Congressional and Administrative News 3905 (1954).) Although the first antecedent provision to section 1595a was enacted in 1866, the first use of the general term "things" occurred in the 1935 enactment. (Act of Aug. 5, 1935, c. 438, sec. 208, 49 Stat. 526.) Until that time, the provision was limited to vehicles and beasts. (Rev. Stat. sec. 3062.) Legislative history expressly states that the purpose of the 1935 change in language was to broaden the scope of the provision to include, in addition to vehicles and beasts, vessels, aircraft, pilot boats, and pilot cars. (S. Rept. No. 1036, 74th Cong., 1st sess. 14 (May 13, 1935).) Thus, the expressly stated purpose in the legislative history for the change in language in 1935 was to include within the scope of the provision specified types of conveyances, and nothing either in the 1935 enactment or its legislative history, or in the 1954 enactment, suggests that "things" refers to real estate.

Although in general law, there are "things real" as well as "things personal," a fair and reasonable interpretation of the statute in question does not extend the scope of the phrase "or other thing" to include lands and buildings. We agree that this is a proper situation for application of the general principle of Noscitur a sociis, whereby the context of the statute would naturally and grammatically limit "or other thing" to items such as those conveyances which are set out in the preceding words of the statute.

In considering the predecessor statutes of section 1595a, one court has said:

> * * * It would seem that the purposes of sections 482 and 483 were to prevent the unlawful importation rather than punish the offense after it had been committed, and to that end the proper officers have been given power, when they suspect that merchandise is being unlawfully introduced into the United States, to stop a vehicle, search and examine it, to see if there is any merchandise therein which is being unlawfully imported. (*United States* v. *One Reo Sedan*, D.C. Mass., 39 F. 2d, 120, 122.)

In many fact patterns, it would be a close question in distinguishing whether or not something becomes so attached to the land as to become a part of the realty. For example, a moveable fish house for which

title remained with a person other than the owner of the land, would not seem to become realty. A house trailer parked temporarily on a lot would appear to retain its character as a conveyance, but a so-called "mobile home" set on blocks and used as a permanent dwelling place for a long period of time in one place, would not seem to retain its moveable character for purposes of 19 U.S.C. 1595a(a).

Furthermore, the liabilities incurred under section 1595a (sec. 596 of the Tariff Act of 1930, as amended), may be contrasted with, and distinguished from, property subject to forfeiture under the internal revenue laws for distilling spirituous liquors with intent to defraud the Government of taxes. For example, title 26, United States Code, sections 5615(3) (C) and (D) specifically provide for the forfeiture of "all the right, title, and interest in the lot or tract of land on which the distillery is situated."

Accordingly, land and structures permanently affixed thereto, such as the dwelling house and pumphouse in the case under consideration, shall not be seized under title 19, United States Code, section 1595a(a).

(C.P.D. 78-3)

Determination of Forfeiture Value for Violations of 19 U.S.C. 1592

Date: February 23, 1978
File: ENF-4-02.2 R:E:C
608057 JP

To: District Director of Customs, Norfolk, Va. 23510.
From: Director, Entry Procedures and Penalties Division.
Subject: Internal advice request concerning establishing forfeiture value in violations of section 1592.

In your request for internal advice dated August 8, 1977, you raise a question as to the determination of forfeiture value for violations of title 19, United States Code, section 1592. You cite an instance where a prepenalty notice was issued in which the forfeiture value was determined by calculating the value of all merchandise covered by the entry in question when the violation was related to only two of four invoices covered by the entry. We understand that each of the invoices listed certain numbers of crates of plywood, but that only two of the invoices contained false information.

You have advised us that counsel for the importer took exception to the forfeiture value cited, arguing that the amount should have included only the quantities listed on the two invoices subject to the violation. Counsel cited in support of his claim the pertinent portion of section 1592 as follows:

"* * * forfeitures shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular

article of merchandise to which such fraud or false paper or statement relates."

We are in agreement with the position of counsel based upon the facts in this case. The court in dicta in *John Bacall Imports, Ltd.* v. *U.S.* (287 F. Supp. 916, at 922 (1968)), said as follows:

> Although 19 U.S.C. 1592 states that merchandise imported by means of "fraudulent or false invoice" shall be subject to forfeiture, the clear meaning is that only *fraudulently* (court's emphasis) imported merchandise is so subject.

You have advised us that only two invoices contained false information of the four invoices covered by the single consumption entry. The merchandise was not contained in a single case or package but in many crates. By invoice, at least, the merchandise was segregable according to the number of crates listed on each invoice. The mere fact that the invoices were aggregated in one entry does not justify a claim for forfeiture value against merchandise which was not falsely invoiced. This position is consistent with the language of the court in the *Bacall* case.

Where merchandise on a single or several consumption entries can be segregated from other merchandise described on that entry or entries which are subject to a section 1592 violation, and such segregation can be achieved by separate invoice or other reasonable means, the claim for forfeiture value should issue only with reference to the merchandise for which the false entry was made.

(C.P.D. 78–4)

False Description of Merchandise; Country of Orgin

Date: May 24, 1978
File: ENF–4–02.2 R:E:C
606519 RG

DISTRICT DIRECTOR OF CUSTOMS,
Tampa, Fla. 33602

DEAR SIR: This is in reference to a memorandum from your office dated June 18, 1976 (deleted material) which forwarded the petition of the (name) seeking relief from a claim for forfeiture value in the amount of $70,206 assessed under the provisions of title 19, United States Code, section 1592. The basis for the claim is that the petitioner, under the cover of 10 consumption entries filed between October 1972 and February 1974, caused to be entered merchandise which was indicated to have been manufactured in Hong Kong when in fact some of the merchandise was manufactured in mainland China. There is a reported actual loss of revenue of $20,031.48.

In the petition for mitigation it is indicated that the entries in question were prepared by petitioner's customhouse broker, based

upon the information received from the supplier, and, consequently, the petitioner was unaware that anything was done in violation of the Customs laws. Correspondence found in petitioner's own files however, establishes that at least one style of chair, designated as "E–19," was manufactured in mainland China and, more importantly, this correspondence demonstrates that petitioner was aware of this fact. During the course of the investigation of this matter, a cable from the foreign supplier to petitioner dated May 15, 1973 was discovered, which reads "E–19 Chinese products increased 40 percent DLS 368 lowest stock price cable confirm quantity." Petitioner sent a response cable dated the same day indicating acceptance of 200 pieces per month. On May 24, 1973, the foreign supplier wrote to petitioner indicating in part "We are pleased to inform you that 200 pieces of E–19 will be forwarded to you per SS *Trenton* in May. Further to our previous letter, we had told you already, E–19 is only make (sic) in China." On May 29, 1973, petitioner wrote to the foreign supplier acknowledging receipt of the May 23 letter. On June 1, 1973, the foreign supplier again wrote to petitioner indicating that the E–19 chairs had been shipped. This letter offered to sell petitioner other merchandise manufactured in China and concluded "But the main problem is the rate in (sic) import tax collected on Chinese products." On August 10, 1973, petitioner wrote the foreign supplier indicating that he had received 200 of the E–19 chairs. Interestingly this letter comments that "The Customs officer has opened these up and find (sic) that the chairs are not tagged 'Made in Hong Kong' * * * Please take care to see that all pieces are tagged with the item number and 'Made in Hong Kong' in the future."

We believe that the above information is more than sufficient to demonstrate that petitioner was aware that at least the style E–19 chairs were being falsely entered as products of Hong Kong, when they were in fact products of mainland China, and that petitioner was aware that such entry lowered his duty liability. The record before us indicates that, when shown the relevant correspondence, petitioner suggested that had he realized these letters were in the file he would have thrown them away. When copies of earlier correspondence with the foreign supplier were requested, petitioner responded that they could not be located.

One additional issue, though it was not raised by petitioner, requires consideration. As indicated above, it is clear that the style E–19 chair is a product of China. The entries in question also included various other items: Tables, dressers, stools, and so on. In determining the loss of revenue it was determined that the merchandise was commingled within the meaning of general headnote 7 of the Tariff Schedules of the United States (TSUS). On the basis of this determination, it was concluded that for the purposes of determining the

loss of revenue all of the merchandise, which was marked as products of Hong Kong, should be considered as Chinese in origin and duty should be assessed under the column 2 rates of duty in the TSUS. This raises the question as to whether merchandise which is in itself distinguishable, that is, a table as opposed to a chair, should be considered commingled because there are different countries of origin for the merchandise which is in a single shipment.

In order to resolve this issue it is necessary to carefully examine general headnote 7, TSUS, which provides in part as follows:

> Commingling of Articles. (a) Whenever articles subject to different rates of duty are so packed together or mingled that the quantity or value of each class of articles cannot be readily ascertained by customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means:
>
> (i) sampling,
> (ii) verification of packing lists or other document filed at the time of entry, or
> (iii) * * *.

This headnote is successor to section 508, Tariff Act of 1930, and running through the decisions under that provision, there have been cases under which merchandise from two countries have been found to be commingled. See *United States* v. *E. E. Holler* (CCPA 124, C.A.D. 133 (1940)) involving a shipment of fish from Mexico with some of the fish caught from an American vessel and therefore entitled to free entry as "products of American fisheries," in paragraph 1730(a), T.A. of 30, and the remaining fish caught from canoes owned by Mexican nationals. Also, shelled peanuts from the Philippines, a portion of which consisted of peanuts from Java to the value of 15 percent of the total value were found to be commingled as Customs officers could not have readily ascertained the value of each class. (*United States* v. *M. S. Cowen & Co.*, 32 CCPA 40, C.A.D. 283 (1944).)

Whether merchandise is commingled depends on the facts in each individual case. This is evident from general headnote 7 and the statement of the court in *Perry Ryer & Co.* v. *United States* (17 Cust. Ct. 1028), as follows:

> After reviewing several early decisions involving segregation of imported commingled commodities, the court said that "in each instance where the importer was granted relief it was definitely held, in effect, that the customs officers would have been able from the per se character of the merchandise, without extrinsic aid, to readily ascertain the quantity or value of the respective classes of commingled goods where such classes were subject to different duty treatments."

In the subject case the record shows that style E–19 chairs were made in China, and that these articles are readily identifiable on the

invoices filed with the entries. It appears that at the time of examination, the record did not show this information but it was developed through investigation after the entries were liquidated. Had the information been before the District Director at the time of liquidation, he would not have been justified in assessing all of the merchandise at the higher rate for he would have known what rate to apply to each article. We, therefore, are of the opinion that the commingling headnote is not applicable, and that its principle should not be extended to this penalty case.

Since, in our view, the merchandise cannot be considered to be commingled, the loss of revenue was recomputed at our request by the resident agent in Jacksonville, who reported a loss of revenue of $2,153.74, attributable to falsely described merchandise.

Based upon the record which has been forwarded to this office and the above rationale, we find that petitioner's conduct constituted an intentional violation of the statute. Accordingly, the claim for forfeiture value is mitigated to $17,230, provided that the actual loss of revenue of $2,153.74 is deposited as withheld duties.

Since it appears from the record that the statute of limitations in this matter will begin to run September 26, 1978, the terms of this decision must be complied with, or a promissory note, executed in accordance with circular PIY 4–A:A:O, dated April 26, 1977, must be submitted, within 30 days of your notification to petitioner or the matter should be immediately referred to the U.S. attorney for appropriate action.

Please inform petitioner of this decision and enclose a copy of this letter with your notification.

U.S. Customs Service

General Notice

(053595)

American Manufacturer's Petition

Extension of time for comments concerning and American manufacturer's petition to reclassify certain battery-operated clock movements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to a recent American manufacturer's petition to the Customs Service to reclassify certain battery-operated clock movements. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATES: Comments must be received on or before October 17, 1978.

ADDRESS: Comments, preferably in triplicate, should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Simon Cain, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5727.

SUPPLEMENTARY INFORMATION: On August 17, 1978, the Customs Service published in the Federal Register (43 F.R. 36548) a notice of receipt of an American manufacturer's petition, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516). On the basis that the metal bearings used in the clock movements are substitutes for jewels and should be counted as jewels for tariff purposes, the petitioner has requested the reclassification of certain battery-operated clock movements under items 720.04 or 720.08, Tariff Schedules of the United States.

COMMENTS: Comments concerning the American manufacturer's petition were to have been received on or before September 18, 1978.

However, the Customs Service has been requested to extend the period of time for submission of comments in order to allow additional time for the preparation of a response to the American manufacturer's petition. As a result, the period of time for submission of comments is extended to October 17, 1978.

Dated: September 14, 1978.

DONALD W. LEWIS,
Acting Assistant Commissioner,
Regulations and Rulings.

[Published in the Federal Register, Sept. 20, 1978. (F.R. 42327)]

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4764)

BEACON CYCLE & SUPPLY CO., INC. *v.* UNITED STATES

Bicycle parts

Merchandise imported from Hong Kong consisting of a radio-headlight in a common housing was classified by customs officials as an entirety as "solid-state (tubeless) radio receivers" under item 685.23 of the tariff schedules and assessed with duty at the rate of 10.4 percent ad valorem. Plaintiff contended that the merchandise should have been classified as an entirety as "electrical articles, and electrical parts of articles, not specially provided for" under item 688.40, with a rate of duty of 6.5 percent ad valorem. Defendant conceded that the merchandise was improperly classified by customs officials and that it should properly be classified as an entirety. Defendant, however, claimed alternatively that the merchandise should properly be classified as "other parts of bicycles" under item 732.36 of the tariff schedules, with a rate of duty of 18 percent ad

valorem. The rate of duty under this item is in excess of the rate assessed by the customs officials.

The court held that the imported merchandise had been improperly classified by the customs officials and was properly classifiable as alternatively claimed by defendant as "other parts of bicycles" under item 732.36 of the tariff schedules. Plaintiff's protest was overruled without affirming the classification of the customs officials.

CLASSIFICATION OF AN ENTIRETY

It is well established in customs law that if an entirety has two functions, each of which is independent and equal, the importation cannot be classified under the specific provision which covers either of the functions. A third classification must be found which encompasses both functions and which most closely describes its character as a single entity. *Remington Rand Div. of Sperry Rand Corp.* v. *United States*, 51 CCPA 57, C.A.D. 837 (1964); *Ashflash Corp.* v. *United States*, 76 Cust. Ct. 112, 412 F. Supp. 585 (1976); *V. Alexander & Co.* v. *United States*, 59 Cust. Ct. 510, 276 F. Supp. 573 (1967).

GENERAL INTERPRETATIVE RULE 10(ij)

A provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part. However, a provision for "parts" is deemed more specific than a provision for "articles not specially provided for," and prevails over a general or "basket" provision. *J. E. Bernard & Co.* v. *United States*, 58 CCPA 91, 436 F. 2d 506 (1971); *Henry A. Wess, Inc.* v. *United States*, 79 Cust. Ct. 6, 434 F. Supp. 650 (1977); *J. E. Bernard & Co.* v. *United States*, 59 Cust. Ct. 31, C.D. 3060 (1967).

PARTS—CLASSIFICATION AS

Whether a given article is a part of another article depends on the nature of the so-called "part," and its function and purpose in relation to the article which it is designed to serve. *Gallagher & Ascher Co.* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964); *Vilem B. Haan* v. *United States*, 67 Cust. Ct. 104, 332 F. Supp. 182 (1971). A significant factor in determining whether merchandise is a "part" is whether it is dedicated for use on the article. *Victoria Distributors, Inc.* v. *United States*, 57 CCPA 76, 425 F. 2d 759 (1970); *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973). An article can be a "part" for customs duty purposes even though it is merely an "accessory" or "optional equipment." *Victoria Distributors, supra.*

CLASSIFICATION OUTSIDE LIMITS OF PLAINTIFF'S PROTEST

Where the defendant succeeds in establishing an alternative claim which provides for a rate of duty higher than that assessed by the customs officials, the court will not grant an affirmative judgment in favor of the defendant. The court will overrule the plaintiff's protest without affirming the customs classification. *See Mitsubishi International Corp.* v. *United States*, 78 Cust. Ct. 4, C.D. 4686 (1977).

Court No. 72-7-01676
Port of San Francisco

[Judgment for defendant.]

(Decided September 5, 1978)

Barnes, Richardson & Colburn (*Richard C. King* and *James Caffentzis* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*David M. Cohen*, Chief, Customs Section, and *Mark K. Neville, Jr.*, trial attorney), for the defendant.

RE, Chief Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise imported from Hong Kong. The merchandise, described on the customs invoices as "bicycle radios complete with accessories," consists of a radio-headlight in a common housing, batteries, a lock and mounting bracket.

Each component was separately classified by the customs officials. The only portion of the classification contested by the plaintiff, and thus the only issue before this court, is the correctness of the classification of the radio-headlight component. The radio-headlight was classified by the customs officials as an entirety as "solid-state (tubeless) radio receivers" under item 685.23 of the Tariff Schedules of the United States (TSUS) with a rate of duty of 10.4 percent ad valorem.

Plaintiff contests the classification and, hence, the rate of duty assessed upon the disputed merchandise, i.e., the radio-headlights. It contends that, as an entirety, the merchandise should have been classified as "electrical articles, and electrical parts of articles, not specially provided for," under item 688.40 with a rate of duty of 6.5 percent ad valorem.

Defendent concedes that the imported merchandise is not a "solid-state (tubeless) radio receiver" under item 685.23, TSUS, and that it has been improperly classified by the customs officials. It submits an alternative classification, and contends that the merchandise should properly and lawfully be classified as "other parts of bicycles" under item 732.36 of the tariff schedules, with a rate of duty of 18 percent ad valorem.

The pertinent provisions of the tariff schedules are as follows:

Classified by the customs officials:

Schedule 6, "Part 5. – Electrical Machinery and Equipment		
* * * * * * *		
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:	
* * * * * * *		
685.23	Solid-state (tubeless) radio receivers	10.4% ad val."

Plaintiff's claimed classification:

Schedule 6, "Part 5. – Electrical Machinery and Equipment		
* * * * * * *		

688.40	Electrical articles, and electrical parts of articles, not specially provided for	6.5% ad val."

Defendant's claimed alternative classification:

Schedule 7, "Subpart C. – Wheel Goods

* * * * * * *

Parts of bicycles:

* * * * * * *

732.36	Other parts of bicycles	18% ad val."

Defendant's alternative claim that the imported merchandise should be classified as "other parts of bicycles" under item 732.36 is of special significance since defendant not only seeks to reclassify the merchandise, but also because item 732.36 carries a rate of duty in excess of the rate assessed by the customs officials.

The record consists of a representative sample of the merchandise, and the testimony of the defendant's witness, Mr. Charles F. Bishop, president of Bright Star Industries, a manufacturer of bicycle accessories.

There is no dispute as to the description of the merchandise in issue. It consists of a radio-headlight in a common housing. The bracket and lock, not in dispute, permit its attachment to the handlebars of a bicycle. Both the radio and the headlight receive their power from batteries included in the merchandise but not in dispute. The radio and headlight may be operated simultaneously or separately.

The defendant has admitted that the customs officials have improperly classified the merchandise since it is well established in customs law that if an entirety has two functions, each of which is independent and equal, the importation cannot be classified under the specific tariff provision which covers either of the functions. Pertinent judicial authority teaches that a third classification must be found which encompasses both functions of the imported merchandise, and which most closely describes its character as a single entity. *Remington Rand Div. of Sperry Rand Corp.* v. *United States*, 51 CCPA 57, C.A.D. 837 (1964); *Ashflash Corp.* v. *United States*, 76 Cust. Ct. 112, 412 F. Supp. 585 (1976); *V. Alexander & Co.* v. *United States*, 59 Cust. Ct. 510, 276 F. Supp. 573 (1967).

The concept of entireties has been judicially expounded in several cases that are well known in the field of customs law. These cases indicate clearly the requirements for merchandise to be dutiable as an entirety. *See, e.g., Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966); *Gallagher & Ascher Co.* v. *United States*, 63 Cust. Ct. 223, C.D. 3899 (1969). In the *Miniature Fashions* case, the Court of Customs and Patent Appeals quoted the following

explanation of the law of entireties found in the case of *Donalds Ltd.* v. *United States*, 32 Cust. Ct. 310, C.D. 1619 (1954):

> [I]f there are imported in one importation separate entities, which by their nature are obviously intended to be used as a unit, or to be joined together by mere assembly, and in such use or joining the individual identities of the separate entities are subordinated to the identity of the combined entity, duty will be imposed upon the entity they represent. 54 CCPA at 14.

In the present case, the radio and headlight were already permanently combined in a common housing when imported, and cannot be physically separated and remain operational. A single common source provides power for both functions, and the importation is a complete article of commerce. In view of the nature of the imported merchandise, the defendant has conceded that it is an entirety for customs classification purposes.

Defendant asserts that the merchandise is classifiable as "other parts of bicycles" under item 732.36, TSUS, and not as electrical articles not specially provided for, under item 688.40, TSUS, as claimed by plaintiff. In support of its claim, defendant stresses that "General Interpretative Rule 10(ij), TSUS, establishes the principle that, 'a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.' " It emphasizes that since plaintiff's claimed classification under item 688.40 is not a specific provision, but rather a general or "basket" provision for electrical articles "not specially provided for," it cannot prevail over a "parts" provision such as item 732.36, TSUS.

The courts have held on numerous occasions that a provision for "parts" is deemed more specific than a provision for "articles not specially provided for," and prevails over a general or "basket" provision. *See J. E. Bernard & Co.* v. *United States*, 58 CCPA 91, 436 F. 2d 506 (1971); *Henry A. Wess, Inc.* v. *United States*, 79 Cust. Ct. 6, 434 F. Supp. 650 (977); *J. E. Bernard & Co.* v. *United States*, 59 Cust. Ct. 31, C.D. 3060 (1967).

Plaintiff does not dispute this principle of customs law but disagrees as to its application to this merchandise. Plaintiff readily admits that the headlight portion of the article, standing alone, would be a "part" of a bicycle under item 732.36, TSUS, but vigorously denies that the radio portion of the article can be a "part" of a bicycle. It asserts that, since the radio portion is not a "part" of a bicycle, the article as an entirety cannot be a part of a bicycle.

The defendant contends that the imported radio and headlight, as an entirety, is a "part" of a bicycle. Citing pertinent decisions of the Court of Customs and Patent Appeals, the defendant, in its brief, urges that an "article regarded by the bicycle industry as a bicycle accessory is classifiable as a bicycle part."

Originally, an article could not be a "part" for customs duty purposes unless it was "an integral, constituent, or component part, without which the article to which it is to be joined, could not *function as such article*." *United States* v. *Willoughby Camera Stores, Inc.*, 21 CCPA 322, 324, T.D. 46851 (1933) (emphasis in original), *cert. denied*, 292 U.S. 640 (1934). *Cf. Mead Cycle Co.* v. *United States*, 28 Treas. Dec. 389, T.D. 35223 (1915). That view referred to as the "rule of essentiality," no longer prevails. It is now clear that an article can be a "part" for customs duty purposes even though it is merely an "accessory" or "optional equipment." *Victoria Distributors, Inc.* v. *United States*, 57 CCPA 76, 425 F. 2d 759 (1970); *Gallagher & Ascher Co.* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964); and cases cited in *Vilem B. Haan* v. *United States*, 67 Cust. Ct. 104, 332 F. Supp. 182 (1971). *See also Mattel, Inc.* v. *United States*, 61 Cust Ct.. 75, 287 F. Supp. 999 (1968) in which Judge Maletz, writing for the court, found that wigs for dolls were "parts" even though they were referred to as "accessories." In the *Mattel* case, although the wigs were parts of dolls, by virtue of Rule 10(ij) they were nevertheless held to be classifiable under the provision which specifically covered "wigs."

In the bicycle trade, an "accessory" is "optional equipment not absolutely essential to the operation of the bicycle as a locomotion device." *Victory Distributors, Inc.* v. *United States*, 57 CCPA at 79. The radio-headlight combination is an accessory because a bicycle may be used without it in the performance of its primary function, that is, the transportation of passengers.

Whether a given article is a part of another article depends on the nature of the so-called "part," and its function and purpose in relation to the article which it is designed to serve. *Gallagher & Ascher Co.* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964); *Vilem B. Haan* v. *United States*, 67 Cust. Ct. 104, 332 F. Supp. 182 (1971). A significant factor in determining whether merchandise is a "part" is whether it is dedicated for use on the article. *Victoria Distributors, Inc.* v. *United States*, 57 CCPA at 80; *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, 223 n.2, C.D. 4433 (1973).

General Interpretative Rule 10(ij) provides that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article . . . ." Defendant's witness, Mr. Charles F. Bishop, stated that the radio-headlight was designed for attachment to, and use on, a bicycle. He testified that the official sample, which was entered into evidence, would be attached to the handlebars of a bicycle by means of a mounting bracket with a screw and a lock. The mounting bracket, screw and lock are integral components of the radio-headlight. According to Mr. Bishop, the radio-headlight can be removed only by unlocking the lock and unscrewing the bolt. The method of attaching the radio-headlight to bicycle handlebars makes

removal and installation difficult. On cross-examination, he testified that the merchandise not only was designed for use on a bicycle but also that it has no other reasonable use or function.

The specific and exclusive use of the radio-headlight for a bicycle is readily apparent by an examination of the official sample, which is equipped with a clamp to mount it on the handlebars of a bicycle. It has long been acknowledged by this court and the Court of Customs and Patent Appeals that official samples are potent witnesses having great probative value. *United States* v. *Halle Bros. Co.*, 20 CCPA 219, T.D. 45995 (1932); *Tilton Textile Corp.* v. *United States*, 77 Cust. Ct. 27, 424 F. Supp. 1053 (1976), *aff'd*, 65 CCPA —, 565 F.2d 140 (1977). Thus, even in cases in which the testimony as to actual use is limited, the character and design of the official sample itself may compel a finding as to the primary use of the merchandise. *See Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, 73, C.D. 4409 (1973). Except for what may be termed "fugitive" uses, the testimony and an examination of the official sample leave no doubt, and the court finds, that the merchandise has no use other than on a bicycle.

Chief use, or even the sole use, however, in and of itself does not necessarily make an importation a "part." *Robert Bosch Corp.* v. *United States*, 63 Cust. Ct. 187, 305 F. Supp. 921 (1969). To be classifiable as a "part," the merchandise must serve a useful function in relation to the main article so that in some way it contributes to the safe or efficient operation of that article. *Victoria Distributors, Inc.* v. *United States*, 57 CCPA 76, 425 F. 2d 759 (1970); *Gallagher & Ascher Co.* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964); *Hancock Gross, Inc.* v. *United States*, 76 Cust. Ct. 237, C.D. 4662 (1976); *Vilem B. Haan* v. *United States*, 67 Cust. Ct. 104, 332 F. Supp. 182 (1971). No one can doubt that measured by this standard, a bicycle headlight is a "part" of a bicycle since it provides illumination for nighttime riding. *Victoria Distributors, Inc.* v. *United States*, 57 CCPA 76, 425 F. 2d 759 (1970) (battery-operated horn-lights properly classified as parts of bicycles under Tariff Act of 1930); *Victoria Distributors, Inc.* v. *United States*, 57 CCPA 80, 425 F. 2d 763 (1970) (generator lighting sets properly classified as parts of bicycles under Tariff Act of 1930); *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973) (battery-operated horn-lights properly classified as parts of bicycles under TSUS). As noted in the *Oxford International* case, "many states require bycycles to be equipped with bicycle lamps for their safe and proper operation at night." 70 Cust. Ct. at 225.

Plaintiff agrees that a bicycle headlight is a "part" of a bicycle for customs classification purposes, but claims that the independent radio function makes the radio-headlight "more than" a bicycle part. In its brief it asserts that "the imported merchandise is concededly 'more than' headlights and therefore 'more than' parts of bicycles." It adds

that "the radio portion of the imported articles, cannot be parts of bicycles as they do not contribute to the safe and efficient operation of bicycles."

In a recent discussion of the "more than" doctrine, the Court of Customs and Patent Appeals in *Englishtown Corp.* v. *United States* 64 CCPA 84, 553 F. 2d 1258 (1977) indicated that:

> [T]here is little dispositive "doctrine" associated with the so-called "more than" doctrine. Thus, while in certain cases factors such as the "predominant function" of an article, or its possession of a "second significant function," might have been important, these factors are not uniquely dispositive. To say that an article is "more than" that described by a particular tariff provision is to say little more than that, in the opinion of the court, the provision cannot be interpreted to cover it. In making this determination, however, the advice in *Green* [*Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 450 F. 2d 1396 (1971)] is to first determine the meaning of the tariff provision involved." 64 CCPA at 87.

It is not questioned that the imported merchandise is a commercial entity that is an entirety for customs classification purposes. The question presented, therefore, pertains to the proper classification of the entirety, consisting of the radio-headlight as a unit, and not either of its parts or functions. It would be unrealistic to attempt to determine the nature of the bicycle radio-headlight apart from its clearly intended ultimate use. *United States.* v. *Pompeo*, 43 CCPA, 9 C.A.D. 602 (1955).

That the radio-headlight is designed and intended to be dedicated for use on bicycles is clear from the testimony of Mr. Bishop, and the design and appearance of the article. It is designed for bicycles, used almost exclusively on bicycles, and the unit is sold as a bicycle part. The carton in which the sample is marketed depicts the merchandise mounted on the handlebars of a bicycle, casting light in the path of the bicycle. Furthermore, it contributes to the safe and efficient operation of a bicycle because it illuminates the roadway, and warns motorists of the cyclists' presence.

The radio function or portion of the unit neither detracts from nor prevents the entirety's usefulness as a bicycle part. Merely because the radio can be played independently of the headlight does not alter the fact that the entirety at all times remains fixed to the bicycle, and contributes to its safe and efficient operation. *See Victoria Distributors, Inc.* v. *United States*, 57 CCPA 76, 425 F. 2d 759 (1970); *Gallagher & Ascher Co.* v. *United States*, 52 CCPA 11, C.A.D. 849 (1964). Furthermore, plaintiff has not introduced any evidence to prove the contrary.

Whether the radio-headlight combination is to be classified as "parts" for customs duty purposes depends upon the pertinence or applicability of the competing provisions of the tariff schedules.

General Interpretative Rule 10(ij) provides that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." Unlike clock-radios (item 685.23, TSUS), and radio-phonograph combinations (item 685.30, TSUS), the combination article at bar is not specifically provided for in the tariff schedules. Therefore, as urged by defendant in its alternative claim, General Interpretative Rule 10(ij) does not preclude its classification as "parts." As between plaintiff's claimed classification of the merchandise as "electrical articles * * * not specially provided for" and defendant's alternative claimed classification, "other parts of bicycles," the provision for "parts" will prevail since it is deemed more specific than a provision for articles not specially provided for. *J. E. Bernard & Co.* v. *United States*, 58 CCPA 91, 436 F. 2d 506 (1971); *Henry A. Wess, Inc.* v. *United States*, 79 Cust. Ct. 6, 434 F. Supp. 650 (1977). That this result is clearly warranted may also be gleaned from the *Seventh Supplemental Report of the Tariff Classification Study*, 1963, which added the following interpretation of Rule 10(ij):

> General Headnote 10(ij) – *Parts.* A provision for "parts" does not prevail over a specific provision for such part. Thus, a provision for "parts" is more specific than a provision for "articles, not specially provided for", but it is not more specific than provisions such as the following for: "springs" (item 652.85), "illuminating articles" (items 653.30–.40), "pumps" (items 660.90–661.15), etc.

It is conceded that the importation was improperly classified under item 685.23, TSUS, as "solid-state (tubeless) radio receivers." Based upon the applicable statutory provisions and judicial precedents, it is the determination of the court that the imported radio-headlight is properly classifiable as "other parts of bicycles" under item 732.36, TSUS, and not as "electrical articles, and electrical parts of articles, not specially provided for" under item 688.40, TSUS.

Although it has been determined that the imported merchandise is properly classifiable under item 732.36, TSUS, as alternatively claimed by the defendant, the court will not reclassify the merchandise. The cases reveal that where the defendant succeeds in establishing an alternative claim which provides for a rate of duty higher than that assessed by the customs officials, the court will not grant an affirmative judgment in favor of the defendant on its alternative claim. *See Mitsubishi International Corp.* v. *United States*, 78 Cust. Ct. 4, C.D. 4686 (1977); *J. E. Bernard & Co.* v. *United States*, 64 Cust. Ct. 525, C.D. 4029, *appeal dismissed*, 58 CCPA 165 (1970); *Randolph Rand Corp.* v. *United States*, 52 Cust. Ct. 107, C.D. 2445 (1964), *aff'd on other grounds*, 53 CCPA 24, C.A.D. 871 (1966). As stated in *Mitsubishi*, the protest "serves to establish the limits of the action instituted in this court under the provisions of 28 U.S.C.

§ 1582(a) (1970)," and "[t]hus, the court may not render a judgment which would reclassify the merchandise beyond the limits of the issues as framed by the protext." 78 Cust. Ct. at 19. *See also In re Solvay Process Co.*, 134 F. 678 (C.C.N.D.N.Y. 1905); *Innis Speiden & Co.* v. *United States*, 14 Cust. Ct. 121, C.D. 924 (1945). In *Speiden* this court said:

> In cases where the correct classification has been found to be outside those limits, the judgment of this and our appellate court has consistently been that the protest must be overruled without affirming the action of the collector * * *. 14 Cust. Ct. at 126.

See also *Pollard Bearings Corp.* v. *United States*, 75 Cust. Ct. 149, 405 F. Supp. 1074 (1975); *Border Brokerage Co.* v. *United States*, 64 Cust Ct. 446, C.D. 4017 (1970); *Sumitomo Shoji New York, Inc.* v. *United States*, 64 Cust. Ct. 299, C.D. 3994 (1970).

During the trial of this action the defendant initially urged that the entry covering the imported merchandise be reliquidated at the higher rate of duty. In this post trial brief the defendant stated that:

> Despite the fact that, since the passage of the Customs Courts Act of 1970, there appears to be no reason why this Court might not grant relief upon the alternative claim raised by way of an affirmative defense, defendant does not advance a claim for such a judgment on the merits. It is sufficient for present purposes that plaintiff's protest be overruled, since in so doing, this Court will be affording prospective guidance to the Customs Service in classifying this and similar merchandise.

In effect, it is suggested that the plaintiff, by having brought this action, and the defendant, by the assertion of its alternative defense, have made it possible for the court to interpret and apply the pertinent provisions of the tariff schedules for the benefit and guidance of both importers and customs officials.

Concluding that "[g]iven the uncertainty as to the jurisdiction of this Court to enter a judgment which would result in the assessment of duties in excess of those originally assessed," the defendant stated that it was not pressing "for reliquidation pursuant to item 732.36" of the tariff schedules. This view was confirmed by a subsequent written communication to the court in which the defendant urged the court to overrule plaintiff's claim "without affirming the classification of the merchandise."

In view of the foregoing it is the determination of the court that the imported merchandise was improperly classified by the customs officials as "solid-state (tubeless) radio receivers" under item 685.23 of the tariff schedules; that is it not classifiable as "electric articles, and electric parts of articles not specially provided for," under item 688.40 of the tariff schedules as claimed by plaintiff; and that it is properly and lawfully classifiable as "other parts of bicycles" under

item 732.36 of the tariff schedules as alternatively claimed by the defendant.

Plaintiff's action is dismissed, and the protest is overruled without affirming the classification of the customs officials.

Judgment will be entered accordingly.

(C.D. 4765)

DAISY-HEDDON. DIV. VICTOR COMPTOMETER CORP. *v.* UNITED STATES

Fishing tackle

ARTICLES—OMITTED PARTS—INSUBSTANTIAL OR NONESSENTIAL

Fishing reel housings exported from Japan in 1972 and 1973 and classified in liquidation as fishing reels under TSUS item 731.20, *held*, properly classified as against the importer's claim for classification of the merchandise as parts of fishing reels under TSUS item 731.26 where the evidence shows that the so-called housing comprise a number of subassemblies and internal gearing which enables the imported mechandise to perform the circular and reciprocal motions commonly associated with open face spinning reels and which actions are not imparted to the articles by the omitted parts necessary to complete them as fishing reels. Substantial or essential test of *Authentic Furniture Products, Inc.* v. *United States*. 61 CCPA 5, C.A.D. 1109 (1973) applied.

Court No. 75-8-02033

Port of Los Angeles

[Dismissed.]

(Decided September 6, 1978)

Stein, Shostak, Shostak & O'Hara, Inc. (*John N. Politis* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Saul Davis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case was exported from Japan in 1972 and 1973 and is described variously on exporter's invoices as "Heddon closed face reels", "fishing reel parts" and "Heddon fly reels;" and on special customs invoices and consumption entries as "fishing reel parts," "fishing reel * * * housing" and "fishing reels." They were classified in liquidation upon entry at Los Angeles-Long Beach, California, under TSUS item 731.20, as modified by T.D. 68-9, as fishing reels valued not over $2.70 each, at the duty rate of 23 *per centum ad valorem*. It is claimed by the plaintiff-importer that the merchandise is properly classifiable under TSUS item 731.26,

as modified by T.D. 68–9, as fishing reel parts, at the duty rate of 13.5 *per centum ad valorem.*

The so-called reel housings imported in this case, as well as parts necessary to complete them after importation, are illustrated in samples introduced into the record before the court. The five containers of samples of models 233, 281, 182, 283, and 284 introduced into evidence and the brochure in the respective containers, describe the contents as "Open Face Spinning Reel" and "Spinning Reel." There is no question in the court's mind, after examining the samples at length, but that the alleged housings are finished articles insofar as the state of manufacture is concerned. What they lack for completion at the time of importation is mere *assembly* with various other parts.

In the case of model 233 reel housing (exhibit 1) the parts necessary to complete the reel consists of: Spool, drag knob, side name plate, side name plate screws (3), and grease. The first four items are before the court as samples (exhibit 2). These items can be easily assembled into their proper place on the housing mechanism, to form a complete functioning reel ready for mounting on a fishing rod. It is also clear from examining the other samples of reels that they too can be readily completely assembled.

The model 281 reel housing (exhibit 3) lacked: Spool, handle and handle nut, drag knob, spool washer, and handle shaft washer. The model 282 reel housing (exhibit 5) lacked the same parts as the model 281. The model 283 reel housing (exhibit 7) lacked: Spool, handle and handle nut, drag knob, and handle arm shaft washer. And the model 284 reel housing (exhibit 9) lacked the same parts as the model 283.

Manipulation of these reel housings discloses that they are actually more than housings *per se*. Each unit as imported is really a combination of subassemblies comprising roughly the main housing with its internal gearing, the rotating flyer assembly and reel shaft, and the bail and bail lock assemblies.

From the testimonial evidence, the court notes the following: Charles F. Barclay, plaintiff's manager of general accounting, and a fisherman for some 43 years who has become acquainted with plaintiff's products during the course of his employment by plaintiff, testified that exhibits 1, 3, 5, 7, and 9 are not sold by plaintiff as fishing reels because they simply are not fishing reels, and that they cannot be used for fishing in the condition as imported because of the missing parts. He was of the opinion that these exhibits are not substantially complete reels, reasoning that out of 60 parts comprising a completed reel, approximately 22 parts were missing.

Dennis Bunker, a manufacturer's representative for many lines of sporting goods, and an owner of a retail fishing tackle business in Burbank, Calif., testified that he is familiar with plaintiff's fishing reels as a result of selling them wholesale and retail, and has also

repaired them. He stated that exhibits 1, 3, 5, 7, and 9 could not be used for fishing because they were not complete, and characterized them as a grouping of parts. He stated, however, that he had never seen them advertised, marketed or sold to the general public or to retailers as parts of reels.

John F. Betz, an owner of a company selling fishing tackle to the general public who has repaired fishing tackle for 25 to 30 years, testified that he has never seen articles similar to exhibits 1, 3, 5, 7, and 9 advertised, marketed or sold as parts or exhibited in any parts or price lists put out by fishing reel companies. He stated that a substantially complete reel is a reel with one or two parts or a spool or handle missing. He was of the opinion that exhibits 1, 3, 5, 7, and 9 are substantially complete, by which he meant an article which has a majority of its parts. He said that people have brought articles to him which would have been complete fishing reels but for the missing spool, handle and drag knob, and referred to them as fishing reels. He stated, however, that he has never sold articles like exhibits 1, 3, 5, 7, and 9 as fishing reels.

Harvey W. Sharrar, employed by Browning Arms Co., a sporting goods distributor, testified that his company sold fishing reels during the period 1972 to 1975, during which time he was a manufacturer's representative covering California. He stated that the term housing refers to an individual cast or ordinary cast part. The individual cast part does not include all the components in exhibits 1, 3, 5, 7, and 9. It includes only the outer portion. The witness said that his company sold every constituent component that goes into a spinning reel, and advertised the availability of these components. He testified that he had not seen or heard of anyone in the trade advertising, marketing, or referring to exhibits 1, 3, 5, 7, and 9 as parts. These exhibits, in his opinion, are reels minus some parts. He considered exhibits 1, 3, 5, 7, and 9 to be unfinished fishing reels, and the addition of the spool, handle, and drag knob to be a simple operation. He stated, however, that he considered the drag knob, spool, and handle to be parts even though they are made up of an assembly of parts.

Plaintiff contends that the imported articles are *parts* of fishing reels, and not *unfinished* fishing reels. Plaintiff argues that the missing reel parts are both essential and substantial.

Defendant contends that plaintiff has failed to prove that the imported merchandise is not within the common meaning of unfinished or substantially complete reels. Defendant argues, "* * * it is clear that since the imported merchandise is not recognized as 'parts' of reels but constitutes much more than mere 'parts' for fishing reels, it was properly classified as 'unfinished' reels, which were 'substantially complete' reels in the sense enunciated in *Authentic Furniture*." (Defendant's brief, p. 28.)

General Interpretative Rule 10(h) of TSUS provides that a tariff description for an article covers such an article whether it is finished or not finished. And General Intrepretative Rule 10(ij) of TSUS provides that a provision for parts of an article covers a product solely or chiefly used as a part of such article. The competition between the unfinished articles and the parts provisions was the subject of decision in *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973), involving an importation of wooden headboards, footboards, posts, ladders, and guardrails for bunk beds. The only missing articles were the siderails. In that case our appellate court affirmed the trial court's finding that the siderails constituted an essential item which precluded classification of the imported merchandise as a substantially complete bunk bed. The court said (p. 7):

> We consider the application of the test, whereby the absence of a substantial or essential part precludes classification as the unfinished article itself, to be well founded in the case law so ably discussed by the lower court and aptly followed in the present case.

Applying the substantial or essential test of *Authentic Furniture* to the evidence in this case, the court finds itself in agreement with the defendant. In the court's opinion, the imported merchandise was properly classified as fishing reels within the purview of item 731.20. It is plain to see that when exhibit 1 was manipulated manually all the action that is characteristically associated with the open-face spinning reel had been built into that article.

Thus, the bail could be cocked. And then it closed upon rotation around the turning flyer. The internal gears moved and rotated the crankshaft in circular motion while at the same time causing the spool shaft to perform its customary reciprocal back and forth motion. This, to the court, constitutes the essence of a spinning reel. This action was imparted to the reel without the addition of the omitted parts. The spool, handle, and drag knob can be used to regulate, retard or refine this action. It is noted from the testimony of people dealing with the industry that they referred to such articles as exhibits 1, 3, 5, 7, and 9 as "reels."

Neither is it of any moment that a fisherman would be unable to fish with articles in the condition of exhibits 1, 3, 5, 7, and 9 at the time of importation. Without more, a fisherman would be unable to fish with a complete reel for that matter. The function of a reel of this kind is to *spin*. And the *spinning action* is achieved by the imported articles in the condition as imported.

The court is not unmindful of plaintiff's efforts to compare, among other things, the cost of the omitted parts against the cost of the imported articles with a view toward establishing the substantiality of the omitted parts. However, a cost analysis is not controlling. One

always must weigh the relationship of the omitted parts against the included parts comprising the imported article and assess the significance of the omitted parts in the total scheme of things. And cost alone does not measure such significance, as where a relatively simple item may be disproportionately high in cost merely as a result of scarcity of raw material or other difficulty of acquisition.

Taking the evidence as a whole, including the samples which the court regards as potent witnesses, to say that the imported articles are not fishing reels because of the absence of the disputed parts would be to say, as defendant so aptly put it, that an automobile from which a wheel had been removed would no longer be an automobile. The court is unable to take that view on the basis of the evidence in this record.

For the reasons stated, the action must be dismissed. Judgment will be entered herein accordingly.

Appeal to United States Court of Customs and Patent Appeals

Appeal 78–17.—Cascade Corp. *v.* United States.—KNUCKLEBOOM CRANES—CONSTRUCTED VALUE—EXPORT VALUE. Appeal from C.D. 4757.

In this case knuckleboom cranes were appraised on the basis of constructed value as defined in section 402(d), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956. The appraised values were obtained from the manufacturer's suggested retail price list for the home market less ¥150,000 which represents the installation charge. Plain clatiffimed that the cranes were properly subject to appraisement on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended *supra*, at the invoiced unit prices. The Customs Court found that plaintiff failed to establish an export value and the appraised values must, therefore, stand.

It is claimed that the Customs Court erred in rendering judgment for appellee (defendant below) and in failing to render judgment for appellant (plaintiff below); in finding and holding that appellant had not made out a *prima facie* case for appraisement of the imported cranes on the basis of export value *supra;* in failing to find and hold that the invoiced prices to appellant fairly reflected market value; in finding and holding that the transactions between appellant and the shipper, resulting in invoice prices, were not negotiated at arm's length; in failing to find and hold that the prices to appellant shipper represent the prices which the merchandise in question was able to command in the market for exportation to the United States during the period in question.

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